

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

June 15, 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 Establishment and Construction of Health Care Facilities/Agencies

Certified Home Health Agencies - Establish/Construct

Exhibit # 1

<u>Number</u>	<u>Applicant/Facility</u>
1. 231016 E	Advent Health Care Services LLC (New York County)

Residential Health Care Facilities - Establish/Construct

Exhibit # 2

<u>Number</u>	<u>Applicant/Facility</u>
1. 192154 E	Sunset Operating, LLC d/b/a Sunset Nursing and Rehabilitation Center (Oneida County)
2. 201263 E	RCA Servicer at Allegany, LLC d/b/a Allegany Center for Rehabilitation and Nursing (Cattaraugus County)
3. 201264 E	RCA Servicer at Aurora Park, LLC d/b/a Aurora Center for Rehabilitation and Nursing (Erie County)
4. 201265 E	RCA Servicer at Gasport, LLC d/b/a Gasport Center for Rehabilitation and Nursing (Niagara County)

5. 201266 E RCA Servicer at Three Rivers, LLC d/b/a Three Rivers Center for Rehabilitation and Nursing (Steuben County)
6. 201267 E RCA Servicer at Westfield, LLC d/b/a Westfield Center for Rehabilitation and Nursing (Chautauqua County)

Home Care Service Agency Licensures

Exhibit # 3

New LHCSAs

- | | <u>Number</u> | <u>Applicant/Facility</u> |
|----|----------------------|---|
| 1. | 222159 E | Maples Assisted Living Facility, LLC d/b/a The Maples Adult Living Community
(Geographical Service Area: Oswego County) |
| 2. | 222215 E | Premier Upstate Properties LLC d/b/a Visiting Angels
(Geographical Service Area: Chemung, Schuyler and Steuben Counties) |
| 3. | 222242 E | Hearthstone Care, LLC
(Geographical Service Area: Columbia, Delaware, Greene, Rensselaer and Schoharie Counties) |
| 4. | 231136 E | Welbe Health NY PACE, LLC
(Geographical Service Area: Bronx, Kings, New York, Queens and Richmond Counties) |

Changes of Ownership

- | | <u>Number</u> | <u>Applicant/Facility</u> |
|----|----------------------|---|
| 1. | 222183 E | Elder Care Homecare Inc.
(Geographical Service Area: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Rockland, Suffolk, Sullivan, Ulster and Westchester Counties) |
| 2. | 222196 E | Horizons at Canandaigua, LLC
(Geographical Service Area: Oneida County) |
| 3. | 222232 E | Good Samaritan Home Health Agency, Inc,
(Geographical Service Area: Allegany, Cattaraugus, Erie, Genesee, Monroe, Niagara, Orleans and Wyoming Counties) |

B. Applications for Construction of Health Care Facilities/Agencies

Acute Care Services- Construction

Exhibit # 4

<u>Number</u>	<u>Applicant/Facility</u>
1. 231001 C	NYU Langone Hospital-Long Island (Nassau County)

Ambulatory Surgery Centers - Construction

Exhibit # 5

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

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

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 6

<u>Number</u>	<u>Applicant/Facility</u>
1. 221200 E	Suffolk Surgery Center, LLC (Suffolk County)
2. 222254 B	Greater Binghamton Surgery Center (Broome County)
3. 231026 B	Maplemere Ventures, LLC (Erie County)
4. 231137 E	Gastroenterology Care, Inc (Kings County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 7

<u>Number</u>	<u>Applicant/Facility</u>
1. 222133 B	NY PACE Facility, Inc. (Kings County)
2. 222250 B	Pesach Tikvah Hope Development, Inc. d/b/a Pesach Tikvah Diagnostic and Treatment Center (Kings County)

3. 222258 B Association to Benefit Children d/b/a ABC Little Clinic
(New York County)
4. 222274 B Modern Associates, LLC d/b/a Dr K Medical Center
(Queens County)
5. 231095 B Fairview Care Center, LLC d/b/a Marton Care
Health Center
(Kings County)
6. 231111 B C & T Health Clinic
(Queens County)
7. 231126 E Forme Rehabilitation Inc
(Westchester County)

D. Certificates

Exhibit # 8

Certificate of Dissolution

Applicant

The Grace View Manor Nursing Home Corporation

Certificate of Amendment of the Certificate of Incorporation

Applicant

Manhattan Eye Foundation, Inc.

Certificate of Dissolution

Applicant

New York Congregational Nursing Center

Certificate of Dissolution

Applicant

Niagara Lutheran Home & Rehabilitation Center, Inc.

II. COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

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

For Emergency Adoption

- 20-06 Amendment of Part 2 and Section 405.3 of Title 10 NYCRR
(Investigation of Communicable Disease)

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

For Information

- 23-09 Repeal of Section 2.61 from Title 10 NYCRR, Amendment of Sections 405.3, 415.19, 751.6, 763.13, 766.11, 794.3 & 1001.11 of Title 10 NYCRR and Sections 487.9, 488.9 & 490.9 of Title 18 NYCRR (Removal of the COVID-19 Vaccine Requirement for Personnel in Covered Entities)

For Adoption

- 21-17 Amendment of Parts 400 and 405 of Title 10 (Clinical Staffing in General Hospitals)

- 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 # 231016-E
Advent Health Care Services LLC

Program: Certified Home Health Agency
Purpose: Establishment

County: New York
Acknowledged: January 31, 2023

Executive Summary

Description

Advent Health Care Services, LLC. (Advent), a Limited Liability Company, requests approval to be established as the new operator of Selfhelp Special Family Home Care, Inc. d/b/a Selfhelp Family Home Care (Selfhelp), an existing Article 36 not-for-profit corporation located at 520 Eighth Avenue, New York (New York County). On March 18th, 2022, Advent entered into an asset purchase agreement (APA) with Selfhelp for the sale and acquisition of the CHHA's operation and certain other assets that will become effective upon PHHPC's approval.

Advent plans to relocate the agency to 419 Church Avenue, Brooklyn (Kings County) and will continue to serve Bronx, Kings, New York, Queens, Suffolk, and Westchester Counties. Selfhelp is currently licensed to provide: Home Health Aides, Medical Social Services, Medical Supplies, Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, Speech Pathology, and Personal Care Services. There will be no change in services as a result of this project.

Ownership before and after the requested change is as follows:

<u>Current Operator</u>	
Self help Special Family Home Care Inc.	100%

Proposed Operator

Advent Health Care Services, LLC	
<u>Members:</u>	<u>%</u>
Aron Goldberger	40%
Moshe Goldberger	30%
Moshe Friedman	30%

OPCHSM Recommendation
Contingent Approval

Need Summary

For Years One and Three, the applicant projects Medicaid to be at 12% 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 §3606(2).

Financial Summary

On May 18th, 2022, Advent entered into an asset purchase agreement (APA) with Selfhelp to acquire Selfhelp's operations for \$5,500,000, which will be funded by member equity.

Budget:	<u>Year One</u>	<u>Year Three</u>
	<u>2023</u>	<u>2025</u>
Revenues	\$2,351,818	\$2,398,856
Expenses	<u>\$2,341,976</u>	<u>\$2,342,380</u>
Gain/(Loss)	\$ 9,842	\$ 56,476

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 agreement acceptable to the Department of Health. [BFA]
2. Submission of two (2) rent reasonableness letters acceptable to the Department of Health. [BFA]
3. Submission of an executed asset purchase agreement acceptable to the Department of Health. [BFA]
4. Submission of a signed/executed copy of an Operating Agreement that is acceptable to the Department. [CSL]
5. Submission of a signed/executed copy of a Lease Agreement that is acceptable to the Department. [CSL]
6. Submission of a copy of the filed Articles of Organization and Amendment that is acceptable to the Department. [CSL]
7. Submission of a signed/executed copy of a Certificate of Amendment of Certificate of Incorporation of Selfhelp that is acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

June 29, 2023

Need Analysis

Background and Analysis

Selfhelp is currently certified to provide home care services in Bronx, Kings, New York, Queens, Nassau, Suffolk, and Westchester Counties. The facility will provide Home Health Aide, Medical Social Services, Medical Supplies, Nursing, Occupational Therapy, Physical Therapy, and Speech Pathology. The hours of operation will be traditional business hours of Monday through Friday, 9 am to 5 pm. There will also be 24-hour coverage provided on-call.

Historical and Projected Patient Volume, Source: Applicant							
	2018	2019	2020	2021	2022	First Year *	Third Year *
Patients	141	179	141	95	107	180	180
Visits	2,276	2,643	3,394	2,908	2,245	11,700	11,935
Visits/Patient	16.1	14.8	24.1	30.6	21.0	65.0	66.3

* Projected data

According to the applicant, the anticipated growth in Years One and Three is explained by the following:

- The lower visits-per-patient data from 2018-2022 is due to Selfhelp historically being short-staffed, which led them to take on patients with less intensive care needs.
- Advent members have the experience and expertise to increase the number of patients and utilization of the CHHA's services, including patients with more intensive care needs.
- Advent members are experienced in the recruitment and retention of home care staff and will focus on recruiting new staff to serve patients with more intensive care needs.
- Home care agencies operated by Advent have consistently had high employee retention rates due to their competitive compensation and benefits packages. They also provide ongoing training and professional development.

The service area had a 65+ population estimate of 1,973,586 in 2022, and according to Cornell's Program on Applied Demographics, that population is expected to grow by 22.2% to 2,431,655 by 2028.

Counties	Westchester	Nassau	Suffolk	Queens	New York	Kings	Bronx
US Census 2022 65+ Estimate	176,296	254,606	269,829	396,377	292,118	391,168	193,192
Cornell PAD 65+ Projections for 2028	216,106	321,782	345,320	497,627	339,313	460,838	250,669

According to Data USA, in 2020, the counties within the service area had health coverage as follows.

	Westchester	Nassau	Suffolk	Queens (2018 data)	New York	Kings	Bronx
Health Coverage %	94.5%	95.9%	95.8%	89.5%	94.2%	93.3%	92.0%
Employer Plans	55.9%	59.5%	58.3%	43.2%	51.5%	41.1%	30.8%
Medicaid	14.2%	10.1%	11.6%	25.9%	20.5%	32.2%	41.8%
Medicare	12.8%	13.5%	13.0%	9.8%	9.7%	8.01%	6.79%
Non-Group Plans	11.3%	12.6%	12.4%	10.3%	12.2%	11.8%	12.1%
Military or VA	0.318%	0.238%	0.501%	0.302%	0.315%	0.327%	0.417%

Below is the applicant's projected payor mix.

Applicant Projected Payor Mix for Outpatient Services		
Payor	Year One	Year Three
Commercial	16.26%	16.26%
Medicare	58.30%	58.29%
Medicaid	12.13%	12.12%
Private Pay	0.00%	0.00%
Charity Care	2.00%	2.00%
Other	11.32%	11.32%

Conclusion

This change in operator will result in no changes to the service area or the services being provided by the CHHA.

Program Analysis

Character and Competence Review

The membership of Advent Health Care Services, LLC is as follows:

Aron Goldberger – 40%

Chief Operating Officer, Excellent Home Care Services, LLC (CHHA)

Moshe Goldberger, EMT – 30%

Partner, Human Care LLC (LHCSA)

Affiliations

- Human Care, LLC (LHCSA) (January 1, 2011 – Present)

Moshe Friedman – 30%

Owner, Human Care, LLC (LHCSA)

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

The information provided by the Bureau of Emergency Medical Services indicates that Moshe Goldberger holds an EMT license (# 463740), and there has never been any disciplinary action taken against this individual or their license.

Facility Compliance/Enforcement

The information provided by the Division of Home and Community-Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

CHHA Quality of Patient Care Star Ratings as of January 24, 2023	
CHHA Name	Quality of Care Rating
Excellent Home Care Services, LLC	3.5 out of 5 stars
Selfhelp Special Family Home Care, Inc., d/b/a Selfhelp Family Home Care	4 out of 5 stars

Conclusion

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

Financial Analysis

Operating Budget

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

	<u>Current 2022</u>	<u>Year One 2023</u>	<u>Year Three 2025</u>
Revenues:			
Commercial-FFS	\$80,317	\$414,813	\$423,109
Medicare FFS	209,053	1,044,793	1,065,689
Medicare-MC	74,195	370,808	378,224
Medicaid-FFS	4,916	24,582	25,074
Medicaid-MC	53,875	268,411	273,780
All Other	51,309	225,411	232,980
Total Revenues	\$473,666	\$2,351,818	\$2,398,856
Expenses:			
Operating	\$1,249,174	\$2,340,699	\$2,341,103
Capital	911	1,277	1,277
Total Expenses	\$1,250,085	\$2,341,976	\$2,342,380
Net Income or (Loss)	(\$776,420)	\$9,842	\$56,476
Utilization hours	13,951	18,000	18,360
Utilization-visits	2,245	11,700	11,934

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

- The projected revenue and utilization assumptions by payor source are based on the current experience of the CHHA and are forecasted to reflect additional utilization.
- The projected increase in patients served is based on the experience of the members of Advent, who have strong backgrounds in the provision of home care services and strong community ties.
 - The increase in utilization will be based on achieving proper staffing levels. The members of Advent stated that they have experience with recruiting and retaining home care staff.
 - The applicant indicated that Selfhelp has been understaffed for many years.
 - Advent will service more patients with increased intensive care by leveraging their existing relationships with other skilled providers.
- Expense assumptions are based on the current experience of the applicant. Other expenses are based on the current cost experience of the CHHA.

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

	<u>Current Year 2022</u>	<u>Year One 2023</u>	<u>Year Three 2025</u>
Commercial-FFS	16.26%	16.26%	16.26%
Medicare-FFS	43.03%	43.03%	43.03%
Medicare-MC	15.27%	15.27%	15.27%
Medicaid-FFS	1.02%	1.02%	1.02%
Medicaid-MC	11.11%	11.11%	11.11%
Charity	2.00%	2.00%	2.00%
Other	<u>11.32%</u>	<u>11.32%</u>	<u>11.32%</u>
Total	100.00%	100.00%	100.00%

Asset Purchase Agreement

The applicant has submitted a draft APA, effective upon PHHPC approval. The terms are summarized below:

Date:	March 18, 2022
Seller:	Selfhelp Special Family Home Care, Inc.
Purchaser:	Advent Health Care Services, LLC
Assets Transferred:	All rights, titles, and interests in the CHHA-designated assets. Including CHHA's operating authority, rate increases after the closing date, CHHA's assets, inventory, personal property, copies of permitted business records, policy & procedures, intellectual property, rights and trademarks, computers and software, assignable contracts, telephone and fax numbers, security deposits, and goodwill.
Excluded Assets:	All assets associated with the assigned CHHA contracts are not stated in the agreement.
Assumed Liabilities:	Obligations and liabilities incurred by the CHHA on or before the closing date. The Seller will retain and pay any of the Seller's Excluded Liabilities which may arise after the closing.
Purchase Price:	\$5,500,000
Payment:	A \$2,500,000 deposit has been made, and \$3,000,000 will be due at closing.

The CHHA's purchase price will be satisfied with equity from the proposed members. Attachment A presents the proposed members' net worth summary and shows sufficient liquid resources to meet the purchase price for the operations.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor under Article 36 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of May 2, 2023, the facility had outstanding Medicaid liabilities of \$1,803,877.

Lease Rental Agreement

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

Date:	TBD
Premises:	419 Church Avenue, Brooklyn, NY 11218
Landlord:	419 Church, LLC
Tenant:	Advent Health Care Services, LLC
Term:	TBD (a 5-year schedule of rental payments has been submitted, which includes a month-to-month holdover clause based on a month-to-month period.
Rent:	\$10,000 year (1) increased by 2% per year for five years.
Provisions:	A \$10,000 security deposit has been paid on trust for any damages to the tenant to the premises; Liability insurance, utilities, and services must be paid by the tenant.

The applicant has attested that the lease is an arm's length arrangement, as the landlord and tenant have no relationship.

Capability and Feasibility

Advent Health Care Services, LLC will acquire the CHHA's operations for \$5,500,000, funded by member equity. A deposit of \$2,500,000 has been made to the seller. The balance of \$3,000,000 will be due at closing and will be funded with member equity. BFA Attachment A, Proposed Member's Net Worth Summary, shows sufficient resources to meet the remaining obligation. Moshe Goldberg and Moshe Freidman have submitted disproportionate share affidavits, stating they will cover any shortfalls of the other proposed members. The APA states that Excellent Home Care will serve as the financial Guarantor

in the case of non-payment of the purchase price. Both parties are equally and jointly responsible for the payment. However, the members of Advent do have sufficient equity to fund this transaction.

The working capital requirement is estimated at \$390,330 based on two months of first-year expenses. The applicant has chosen to overfund working capital totaling \$902,197. Working capital will be funded by the proposed members of Advent Health Care Services, LLC. BFA Attachment A shows the members have sufficient equity to fund working capital.

The submitted budget projects a gain of \$9,842 and \$56,476 in the first and third years, respectively. Attachment B presents Advent Health Care Services, LLC's pro forma balance sheet as of the first day of operations and shows the CHHA will start with \$6,402,197 in member equity. The budget appears to be reasonable.

BFA Attachment D, Financial Summary for Selfhelp Special Family Home Care, Inc. and Affiliates, shows the certified financial statements for the fiscal years ending June 30, 2021, and June 30, 2022. Both years present a positive working capital and net asset position. For the fiscal year ending June 30, 2021, Selfhelp had a net gain of \$4,048,013. In the fiscal year ending June 30, 2022, Selfhelp had a net loss of (\$8,484,282). The losses were due to lower contributions, decreased home care revenue, and poor return on investment. The December 31, 2022 internal financial statement shows a positive working capital and net asset position and operating gain of \$341,413.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Attachments

BFA Attachment A:	Advent's Proposed Members' Net Worth
BFA Attachment B:	Pro Forma Balance Sheet of Advent
BFA Attachment C:	Current and Proposed Organizational Charts
BFA Attachment D:	Financial Summary for Selfhelp



Project # 192154-E
Sunset Operating, LLC d/b/a Sunset Nursing and
Rehabilitation Center

Program: Residential Health Care Facility **County:** Oneida
Purpose: Establishment **Acknowledged:** September 25, 2019

Executive Summary

Description

Sunset Operating, LLC, an existing New York limited liability company, requests approval to be established as the new operator of Sunset Nursing and Rehabilitation Center, a 120-bed, Article 28 residential health care facility (RHCF) at 232 Academy Street, Boonville, (Oneida County) NY. Sunset Nursing and Rehabilitation, Inc. is the current operator, and Sunset Boonville Realty Corp. is the real property owner.

On July 9, 2018, Sunset Nursing and Rehabilitation Center, Inc. entered into an Asset Purchase Agreement (APA) with Sunset Operating, LLC for the sale and acquisition of the RHCF's operations and certain other assets for \$2,350,000. Concurrently, Sunset Boonville Realty Corp. and Sunset Nursing and Rehabilitation, Inc. entered into a Real Estate Purchase Agreement with Sunset Propco, LLC for the sale and acquisition of the RHCF's real estate for \$7,050,000. Sunset Operating, LLC will lease the RHCF premises from Sunset Propco, LLC.

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

<u>Current Ownership</u>	
Sunset Nursing & Rehabilitation Center, Inc.	
<u>Members:</u>	
Mary Katherine Mathis	25.25%
Jeremy L. Britton	25.25%
Edward Farbenblum	9.90%
Joel Schwartz	9.90%
Aharon Bleier	9.90%
Yehuda (Jason) Newman	9.90%
Orly Lieberman	9.90%

<u>Proposed Ownership</u> Sunset Operating, LLC	
<u>Members:</u>	
Orly Lieberman *	55.0%
Joel Schwartz	27.5%
Aharon Bleier	17.5%

* *Managing Member*

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

<u>Current Ownership</u> Sunset Boonville Realty Corp.	
<u>Members:</u>	
Mary Katherine Mathis	50.0%
Jeremy L. Britton	50.0%

<u>Proposed Ownership</u> Sunset Propco, LLC	
<u>Members:</u>	
MFRC LLC ¹	55.0%
JLS Equities LLC ²	17.5%
Jonathan Bleier	17.5%
Joel Schwartz	10.0%

¹ Sole member: The Vineyard Commons Preservation Trust.

² Members: Jacob Sod 2017 Family Trust (50%) Leah Sod 2017 Family Trust (50%).

Mr. Orly Lieberman, one of the proposed members of Sunset Operating, LLC, is also seeking PHHPC approval to be established as the new operator of eight RHCFs which are presented in BFA Attachment F.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. Occupancy, as of April 5, 2023, was 87.5% for the facility and 79.2% for Oneida County.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The total purchase price for the RHCF's operations and realty is \$9,400,000. Sunset Propco, LLC will obtain a \$9,400,000 loan from Monticello Funding, LLC to finance the combined purchase price and will lend Sunset Operating, LLC \$2,350,000 for the purchase of

the operating assets. The operating entity loan is non-interest bearing, with payment of the principal due on January 31, 2029. The Loan and Security Agreement (master loan commitment) and Unsecured Subordinated Note (operations loan commitment) between the parties were executed on February 28, 2019. The lender will advance the loan proceeds under the master loan agreement upon approval of this application. The master loan bears interest at the 1 Month LIBOR rate + 5.65% for a two-year term. The 1 Month LIBOR was 1.67% for an estimated interest rate of 7.32%. The realty entity intends to refinance prior to the end of the master loan term.

<u>Budget:</u>	<u>Year One</u>	<u>Year Three</u>
	<u>2023</u>	<u>2025</u>
Revenues	\$10,816,858	\$10,816,858
Expenses	<u>10,581,875</u>	<u>10,662,375</u>
Gain/(Loss)	\$234,983	\$154,483

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Approval (See LTCOP Attachment A)

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

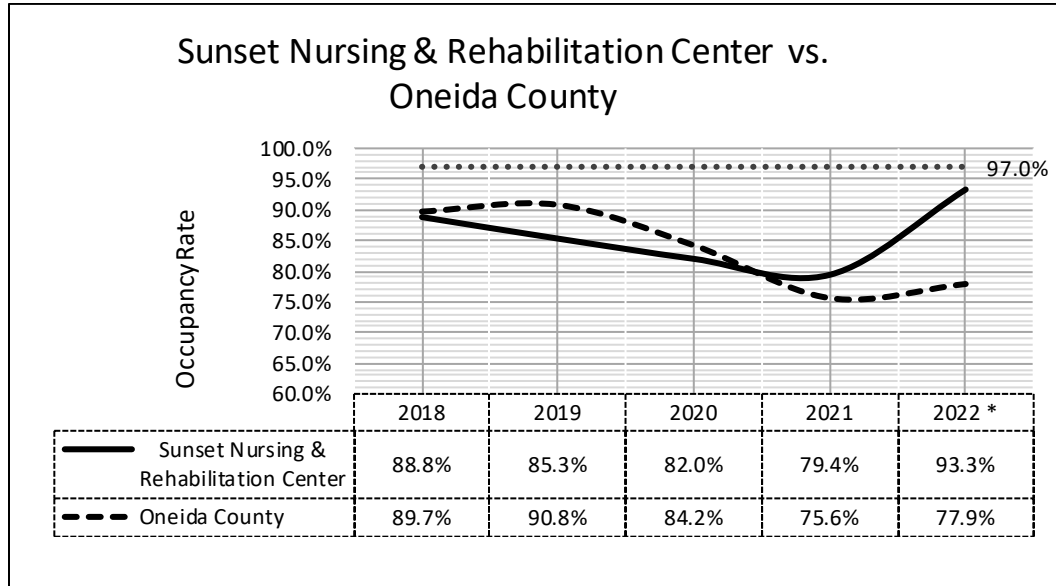
1. The project must be completed within **three years from the date of the Public Health and Health Planning Council recommendation letter**. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.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

Council Action Date
June 29, 2023

Need Analysis

Background and Analysis

The primary service area is Oneida County. Based on US Census population estimates from 2021, the demographics of the county include 85.6% White, 7.2% Black or African American, 4.2% Asian, with 6.6% Hispanic or Latino.



* 2022 data is self-reported and not certified.

The applicant states the reason for low occupancy at the facility over the past several years was the need to reduce admissions due to nursing staff shortages. The facility hired a new administrator who has been focused on increasing occupancy at the facility. Occupancy, as of April 5, 2023, was 87.5% for the facility and 79.2% for Oneida County.

The table below shows the CMS Rating and the utilization of the six closest RHCs to Sunset Nursing & Rehabilitation Center.

Facility Name	CMS Overall Rating	Number of Beds	Distance from other RHCs	Occupancy			
				2019	2020	2021	2022
	As of 4/2023		Distance/Minutes				
Sunset Nursing	1	120	0 miles/0 mins	85.3%	82.0%	79.4%	93.3%
Rome Memorial Hosp	3	80	22.7 miles/29 mins	99.1%	72.0%	53.9%	60.4%
Bethany Gardens	4	100	22.8 miles/28 mins	96.0%	94.0%	94.8%	95.4%
The Grand Rehab at Rome	1	160	23.2 miles/30 mins	94.4%	82.0%	96.0%	96.8%
Colonial Park Rehab	1	80	23.8 miles/32 mins	90.2%	86.7%	93.3%	95.5%
Betsy Ross Rehab	1	120	23.9 miles/32 mins	89.5%	81.9%	67.2%	80.5%
Trustees of the Eastern Star	3	84	26.1 miles/36 mins	60.0%	46.9%	37.6%	58.6%

The following table provides the Case Mix Index (CMI) for the facility and the surrounding RHCs, which reflects the relative resources predicted to provide care to a resident. The higher the case mix index, the greater the resource requirements for the residents.

Case Mix Index	2019		2020		2021	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Sunset Nursing	1.1513	0.9112	1.0859	1.0226	1.213	1.272
Rome Memorial Hosp	1.2672	0.8985	1.015	0.8943	1.225	0.905
Bethany Gardens	1.4511	1.2871	1.3215	1.3857	1.224	1.373
The Grand Rehab at Rome	1.3924	1.2092	1.2261	1.1836	1.119	1.103
Colonial Park Rehab	1.3242	1.1998	1.3324	1.2266	1.316	1.244
Betsy Ross Rehab	1.154	1.002	1.0443	1.0069	1.154	1.122
Trustees of the Eastern Star	1.0453	0.7972	0.8752	0.8535	0.971	0.874

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

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

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. As demonstrated in the table below, the facility's Medicaid admissions rate was below the threshold of 75% of the Oneida County rate for 2019 through 2021.

Medicaid Access	2019	2020	2021
Oneida County Total	30.0%	24.9%	27.3%
Oneida Threshold Value	22.5%	18.7%	20.5%
Sunset Nursing & Rehab.	20.7%	8.3%	11.7%

Conclusion

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

Program Analysis

Program Proposal

This application proposes to establish Sunset Operating, LLC as the new operator of an existing 120-bed residential health care facility (RHCf) located at 232 Academy Street, Boonville, NY, currently operated as Sunset Nursing and Rehabilitation Center

Facility Information

	Existing	Proposed
Facility Name	Sunset Nursing and Rehabilitation Center	Same
Address	232 Academy Street Boonville, NY 13309	Same
RHCf Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	LLC
Class of Operator	Proprietary	Proprietary
Operator	Sunset Nursing and Rehabilitation Center, Inc.	Sunset Operating, LLC
	Edward Farbenblum 9.90%	Orly Lieberman 55.0%
	Aharon Bleier 9.90%	Joel Schwartz 17.5%
	Joel Schwartz 9.90%	Aharon Bleier 27.5%
	Orly Lieberman 9.90%	
	Yehuda (Jason) Newman 9.90%	
	Jamie Beaver Ingham 8.45%	
	Anthony Thomas DePinto Jr. 8.40%	
	Scott William West 8.40%	
	Susan Jennifer Grigg 8.45%	
	Patrick Joseph McFeely 8.40%	
	Andrea Rose Czora 8.40%	

Character and Competence

Orly Lieberman is concurrently employed as a Psychotherapist at the Private Practice of Orly Lieberman, which conducts individual and family psychotherapy sessions located in Valley Stream, NY, since November 2020 and as a Pre-Marital Counselor (Kallah Teacher) since January 2006. Orly Lieberman holds a master's degree in Clinical Mental Health Counseling from St. John's University. Orly Lieberman is licensed as a mental health counselor in New York State and discloses the following ownership interests in health facilities:

Nursing Homes

Sunset Nursing and Rehabilitation Center (NY) (9.9%)	02/2019 to present
Roscoe Rehabilitation and Nursing Center (NY) (1%)	08/2018 to present
Autumn View Health Care Facility, LLC (NY) (50%)	03/2017 to present
Brookhaven Health Care Facility, LLC (NY) (50%)	03/2017 to present
Garden Gate Health Care Facility, LLC (NY) (50%)	03/2017 to present
Harris Hill Nursing Facility, LLC (NY) (50%)	03/2017 to present
North Gate Health Care Facility, LLC (NY) (50%)	03/2017 to present
Seneca Health Care Center, LLC (NY) (50%)	03/2017 to present
Golden Hill Nursing & Rehabilitation Center (NY) (9.54%)	01/2020 to present
Absolut Center for Nursing and Rehabilitation at Westfield (NY) (47%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (NY) (47%)	Pending
Absolut Center for Nursing and Rehabilitation at Gasport (NY) (47%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (NY) (47%)	Pending

Absolut Center for Nursing and Rehabilitation of Allegany (NY) (47%)	Pending
Taconic Rehabilitation and Nursing at Beacon (NY) (60%)	Pending
Taconic Rehabilitation and Nursing at Hopewell (NY) (60%)	Pending
Taconic Rehabilitation and Nursing at Ulster (NY) (60%)	Pending

End Dated Ownership
 Bishop Rehab and Nursing Center (NY) (1%) 12/2017 to 09/2022

Joel Schwartz lists employment as a healthcare investor since 2016 at The Schwartz Group NY, LLC, a healthcare business that facilitates nursing home sales. Prior to this, Joel Schwartz was employed as the General Manager for Medfast Billing, Inc., a medical billing company, between September 2008 and May 2016. Joel Schwartz holds a high school diploma and discloses the following health facility ownership interests:

Nursing Homes

Sunset Nursing and Rehabilitation (NY) (9.9%)	02/2019 to present
Leroy Village Green Nursing and Rehabilitation Center (NY) (10%)	08/2019 to present
Bethel Nursing & Rehabilitation Center (NY) (10%)	Pending

Out-of-State Nursing Homes

Manatee Springs Rehabilitation and Nursing Center (FL) (7%)	04/2017 to present
Page Rehabilitation and Healthcare Center (FL) (10%)	01/2019 to present
Saunders Nursing and Rehabilitation Center (PA) (10%)	10/2022 to present

Aharon Bleier lists employment as the Director of Operations at Wym OP Holdings, located in Reading, PA, since 2019. Mr. Bleier holds a Rabbinical degree from Tiferes Israel and discloses the following health facility ownership interests:

Nursing Homes

Sunset Nursing and Rehabilitation, Inc. (NY) (9.9%)	02/2019 to present
Massapequa Center for Rehabilitation and Nursing (NY) (5%)	11/2017 to present
Bethel Nursing & Rehabilitation Center (NY) (8%)	Pending

Out-of-State Nursing Homes

Wyomissing Health and Rehabilitation Center (PA) (80%)	10/2019 to present
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Quality Review

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

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership					
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	<u>< 48 Months</u>		<u>48 Months or more</u>	
		<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>
Aharon Bleier	3	1	100%	2	50%
Orly Lieberman	9	1	0%	8	12.5%
Joel Schwartz	5	2	50%	3	67%

DURATION OF OWNERSHIP AS OF 6/29/2023

Data date: 04/2023

New York. The proposed owner's portfolio includes ownership in eleven New York facilities. Ten of the New York facilities in the ownership portfolio have a CMS overall quality rating of average or higher. The remaining facility, Sunset Nursing and Rehabilitation Center, has a CMS overall quality rating of much below average. To improve the quality at Sunset Nursing and Rehabilitation, Inc., the applicant indicated the following:

Several steps have been taken to address quality and improve operations at the facility. Specifically, the facility implemented a new Electronic Medical Records system called Point Click Care, which has improved staff efficiency and resident outcomes. In addition, the facility retained the services of an on-site consultant to review quality and operations. The facility has also added new staff by recruiting employees who focus on interviewing and hiring new direct care staff for the facility. The facility also strengthened its clinical team by hiring quality assurance nurses to perform routine audits of regulatory requirements to strengthen and sharpen the facility's operational processes. Finally, the facility recently hired a new Administrator who has over 15 years of nursing home experience, including a specialized background in survey performance improvement. The facility believes that these initiatives will have a positive impact on the facility's next survey, which should result in an increase in the facility's star ratings.

Florida. The proposed owner's portfolio includes ownership in two Florida facilities. One facility Manatee Springs Rehabilitation and Nursing Center, has a CMS overall rating of above average. The other Florida facility, Page Rehabilitation and Healthcare Center, has a CMS overall rating of much below average. To improve the quality at Sunset Nursing and Rehabilitation, Inc., the applicant indicated the following:

The overall rating at Page Rehabilitation and Healthcare Center was the result of a health inspection conducted on January 31, 2022, which resulted in 14 citations. Corrective actions were immediately put in place, and the scope and severity of these citations were subsequently lowered as being "isolated" and resulting in "no actual harm." The facility provides care for a high-acuity resident population, and as such, the facility is often subject to volatility in its star ratings. To maintain a high-quality level of care for its residents, the facility has recruited and hired a new facility Administrator, a new Director of Nursing, and a Certified Infection Preventionist.

Pennsylvania. The proposed owner's portfolio includes ownership in two Pennsylvania facilities. The Pennsylvania facilities in the ownership portfolio have a CMS overall quality rating of below average or lower. Currently, Wyomissing Health and Rehabilitation Center has a CMS overall rating of two stars, and Saunders Nursing and Rehabilitation Center has a CMS overall rating of one star. To improve the quality at Wyomissing Health and Rehabilitation Center and Saunders Nursing and Rehabilitation Center, the applicant indicated the following:

Wyomissing Health and Rehabilitation Center currently shows two (2) stars in the Overall category. The facility's Overall star rating is being impacted by the facility's Staffing rating, which is currently one (1) star. The facility has hired three (3) new Registered Nurses during the past three (3) months, and the facility is actively recruiting additional nursing staff. The facility states that all appropriate background checks have been performed. As such, the facility is expecting its Staffing rating to increase to two (2) stars, which should drive the facility's overall star rating to three (3) stars within a short timeframe.

Joel Schwartz became a 10% member of Saunders Nursing and Rehabilitation Center on October 3, 2022. At that time, the facility showed one (1) star in the Overall category. On November 18, 2022, the facility had its annual survey, which resulted in several low-level tags. Since that time, the facility has been working to improve its Quality, Staffing, and Health Inspection ratings by implementing the following initiatives: daily clinical meetings; hiring of a new Nurse Practitioner who conducts daily rounds of the facility; focusing on recruitment and retention of qualified staff; and regular quality control meetings. The facility expects that these initiatives will increase the facility's Overall star rating within the near term.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Sunset Nursing and Rehabilitation Center	Subject Facility	*	*	**	*
	02/2019	**	***	***	*
Autumn View Health Care Facility	Current	****	****	*****	*
	03/2017	*****	****	*****	***
Brookhaven Health Care Facility	Current	*****	****	*****	***
	03/2017	*****	****	*****	*****
Garden Gate Health Care Facility	Current	****	****	*****	*
	03/2017	*****	****	*****	****
Harris Hill Nursing Facility	Current	***	****	****	*
	03/2017	*****	****	*****	****
North Gate Health Care Facility	Current	****	*****	***	*
	03/2017	****	***	****	****
Seneca Health Care Center	Current	*****	****	*****	**
	03/2017	*****	****	*****	****
Golden Hill Nursing & Rehab Center	Current	***	***	****	**
	01/2020	*****	****	*****	**
Roscoe Nursing and Rehabilitation Center	Current	****	****	*****	*
	08/2018	*****	****	*****	***
Leroy Village Green	Current	***	***	****	**
	08/2019	***	**	*****	*****
Massapequa Center Rehabilitation and Nursing Center	Current	***	**	*****	**
	11/2017	***	**	*****	***
Florida					
Page Rehabilitation and Healthcare Center	Current	*	*	***	***
	01/2019	**	*	*****	*****
Manatee Springs Rehabilitation and Nursing Center	Current	***	***	****	***
	04/2017	*	*	***	***
Pennsylvania					
Wyomissing Health and Rehabilitation Center	Current	**	***	****	*
	10/2019	***	***	***	**
Saunders Nursing and Rehabilitation Center	Current	*	*	***	*
	10/2022	**	**	***	***

Data date: 04/2023

End-Dated Nursing Home Affiliations

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Bishop Rehabilitation and Nursing Center	End of Ownership 09/2022	SFF	SFF	SFF	SFF
	12/2017	*	*	**	*

Enforcement History

New York

A review of the operations of Sunset Nursing and Rehabilitation Center for the time period indicated above reveals the following:

- The facility was assessed a federal CMP in the amount of \$6,923.00 and fined \$2,000.00 pursuant to Stipulation and Order NH-21-206 for surveillance findings on 07/21/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of Roscoe Rehabilitation and Nursing Center for the time period indicated above reveals no enforcements.

A review of the operations of Autumn View Health Care Facility, LLC, for the time period indicated above reveals the following:

- The facility was assessed federal CMPs of \$650.00 on 07/19/2021 for failure to report COVID data.

A review of the operations of Brookhaven Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-006 for surveillance findings on 11/16/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was assessed federal CMPs of \$650.00 on 08/30/2021 and \$975.00 on 09/13/2021 for failure to report COVID data.

A review of the operations of Garden Gate Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-22-053 for surveillance findings on 02/11/2022. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of Harris Hill Nursing Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-070 for surveillance findings on 03/17/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-071 for surveillance findings on 01/08/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of North Gate Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$6,000.00 pursuant to Stipulation and Order NH-22-062 for surveillance findings on 08/21/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was assessed federal CMPs of \$650.00 on 08/02/2021, \$975.00 on 08/09/2021, and \$1,316.00 on 01/17/2022 for failure to report COVID data.

A review of the operations of Seneca Health Care Center, LLC for the time period indicated above reveals the following:

- The facility was fined \$10,000.00 pursuant to Stipulation and Order NH-23-041 for surveillance findings on 01/12/2023. Deficiencies were found under 415.12(h)(2) Quality of Care. The facility failed to ensure that each resident received adequate supervision to prevent accidents.

A review of the operations of Golden Hill Nursing & Rehabilitation Center for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-234 for surveillance findings on 08/31/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was fined \$8,000.00 pursuant to Stipulation and Order NH-20-034 for surveillance findings on 06/22/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- A federal CMP in the amount of \$3,250.00 was also assessed for the surveillance findings on 6/22/2021.
- The facility was assessed federal CMPs of \$655.00 on 01/04/2021 for failure to report COVID data.

A review of the operations of Leroy Village Green Nursing and Rehabilitation Center for the time period indicated above reveals no enforcements.

A review of Massapequa Center for Rehabilitation and Nursing for the period specified above reveals the following:

- The facility was assessed a federal CMP of \$7,036.00 on 03/01/2019 for failure to protect each resident from all types of abuse, such as physical, mental, sexual abuse, physical punishment, and neglect by anybody under Federal Tag 600 at a G level.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 19-027 issued for surveillance findings on March 1, 2019. Deficiencies were found under 10 NYCRR 415.19(b)(1)(i). The facility failed to establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order # 20-041 issued for surveillance findings on August 14, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1), (a)(2), and (b)(1). The facility failed to establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection.

A review of Bishop Rehab and Nursing Center for the period specified above reveals the following:

- The facility was assessed a federal CMP of \$75,582.00 and fined \$6,000.00 pursuant to Stipulation and Order# 23-007 issued for surveillance findings on September 7, 2022. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of care Medication Errors. The facility failed to administer prescribed anti-organ rejection medication to a resident for four days and failed to notify the physician of the error. Additionally, the facility failed to administer bi-weekly medication for anemia to the same resident and failed to notify the physician or reschedule the missed dose. The facility also failed to administer monthly intravenous medication to a resident during their stay at the facility and failed to ensure that the medication be administered to the resident following their discharge.
- The facility was assessed a federal CMP of \$9,750.00 and fined \$6,000.00 pursuant to Stipulation and Order# 22-144 issued for surveillance findings on May 4, 2022. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care Adequate Supervision, NYCRR 66-4.1 Vaccinations of Nursing Home Residents and Personnel, and 10 NYCRR 415.19 Infection Control. The facility failed to ensure each resident was offered the COVID-19 vaccine and provide education regarding the benefits and risks, and potential side effects associated with the vaccine. The facility was cited for failure to ensure staff donned a mask before entering the room of a resident who was unvaccinated for influenza and COVID-19. The facility was also cited for failure of a staff member to perform hand hygiene after removing an unclean wound dressing and cleaning a resident's wound.
- The facility was assessed a federal CMP of \$8,223.00 and fined \$2,000.00 pursuant to Stipulation and Order # 19-052 issued for surveillance findings on August 14, 2019. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii) Request/ Refuse/ Discontinue Treatment, Formulate Advance Directives.
- The facility was assessed a federal CMP of \$8,096.00 on 12/20/2019 for failure to protect each resident from all types of abuse, such as physical, mental, sexual abuse, physical punishment, and neglect by anybody under Federal Tag 600 at a G level.

- On 12/04/2020, the facility was cited for failure to provide appropriate treatment and care according to orders, residents' preferences, and goals under Federal Tag 684 at a G level.
- The facility was assessed a federal CMP of \$19,523.00 during a Covid-19 Infection Control Survey on 12/02/2020 under Federal tag 880 for failure to provide and implement an infection prevention and control program.
- The facility was assessed federal CMPs of \$66,319.00 and \$15,000.00 on 09/03/2021 under Federal Tag 836 for failure to ensure the facility is licensed under applicable state and local law and operates and provides services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards.
- On 10/25/2021, the facility was assessed a federal CMP of \$81,319.00 for failure to prepare residents for a safe transfer or discharge from the nursing home under Federal Tag 624 at a G level.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on September 23, 2021. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care Adequate Supervision. The facility failed to supervise a resident at risk of elopement, who attempted to elope through their third-story window, resulting in fatal injuries. The facility was cited for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents. Federal Tag 689 at a J level.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on September 20, 2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control. Facility staff was observed wearing their face mask below their nose.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on October 25, 2021. Deficiencies were found under 10 NYCRR 415.3(i) Transfer and Discharge Rights. The facility discharged a resident without ensuring the resident, PHL surrogate, or a family member understood the discharge and with the medications ordered for a different resident. The resident ingested these medications for seven days and subsequently went into cardiac arrest.
- The facility was fined \$14,000.00 pursuant to Stipulation and Order # 21-200 issued for surveillance findings on January 17, 2020, and September 25, 2020. Deficiencies were found under 10 NYCRR 415.12. On 09/25/2020, the facility did not reassess a resident who fell and complained of severe pain when the resident's clinical condition did not improve; the facility failed to timely implement a stat order for an x-ray. On 01/17/2020, the facility did not timely perform a blood clotting test (PT/INR) as ordered for a resident on blood thinning medications. Also, the facility did not implement an order to treat a resident's skin reaction to a therapeutic treatment.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 21-168 issued for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.12(f)(1)(2). The facility failed to ensure residents received treatment and care in accordance with professional standards of practice.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 21-041 issued for surveillance findings on December 20, 2019, and September 17, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and (2), 400.2, and 415.4(b). The facility failed to maintain an infection control program by failing to enforce PPE requirements and had four events of not wearing a face mask within six feet of a resident. Also, the facility failed to ensure a resident was not free from abuse, and staff immediately reported abuse.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order # 19-052 issued for surveillance findings on August 14, 2019. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii), Right to Privacy. Each resident shall have the right to personal privacy and confidentiality of his or her personal and clinical records which shall reflect the resident's right to approve or refuse the release of personal and clinical records to any individual outside the facility except when the resident is transferred to another health care institution or record release is required by law.
- On 08/14/2019, the facility was cited for failure to honor the resident's right to request, refuse, and/or discontinue treatment, to participate in or refuse to participate in experimental research, and to formulate an advance directive. Federal Tag 578 at a G level.

Florida

A review of Page Rehabilitation and Healthcare Center for the period specified above reveals the following:

- The facility was cited on 01/30/2020 for failure to honor the resident's right to request, refuse, and/or discontinue treatment Federal Tag 578 at a J level. The facility was also cited on 1/30/2020 for failure to administer the facility in a manner that enables it to use its resources effectively and efficiently Federal Tag 835 at a J level.
- The facility was assessed federal CMPs of \$658.00 on 02/14/2022, \$987.00 on 02/21/2022, \$1,316.00 on 02/28/2022, \$1,645.00 on 03/07/2022, \$1,973.00 on 03/14/2022, \$3,542.00 on 03/21/2022, \$2,631.00 on 03/28/2022, \$2,960.00 on 04/04/2022, \$3,618.00 on 04/18/2022, and \$3,289.00 on 04/11/2022 for failure to report COVID data.

A review of Manatee Springs Rehabilitation and Nursing Center for the period specified above reveals the following:

- The facility was assessed federal CMPs of \$650.00 on 11/15/2021 and \$975.00 on 11/22/2021 for failure to report COVID data.

Pennsylvania

A review of Wyomissing Health and Rehabilitation Center for the period specified above reveals the following:

- The facility was assessed federal CMPs of \$650.00 on 01/18/2021, \$983.00 on 02/08/2021, \$1310.00 on 03/01/2021, \$1638.00 on 09/13/2021, and \$1950.00 on 09/27/2021 for failure to report COVID data.

A review of Saunders Nursing and Rehabilitation Center for the period specified above reveals no enforcements.

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

Operating Budget

The applicant has submitted the current year (2021) operations and an operating budget, for the first and third years after the change in operator, summarized below:

	<u>Current Year (2021)</u>		<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:						
Medicaid FFS	\$187.00	\$4,371,503	\$187.00	\$5,223,947	\$187.00	\$5,223,947
Medicaid MC	\$176.79	\$410,509	\$176.78	\$490,558	\$176.78	\$490,558
Medicare FFS	\$489.56	\$1,925,939	\$489.58	\$2,301,497	\$489.58	\$2,301,497
Medicare MC	\$468.54	\$798,386	\$468.60	\$954,071	\$468.60	\$954,071
Private Pay	\$449.78	\$1,545,427	\$449.78	\$1,846,785	\$449.78	\$1,846,785
Total Revenues		\$9,051,764		\$10,816,858		\$10,816,858
Expenses:						
Operating	\$258.95	\$9,004,389	\$221.03	\$9,184,477	\$222.96	\$9,264,977
Capital	\$40.19	\$1,397,398	\$33.63	\$1,397,398	\$33.63	\$1,397,398
Total Expenses	\$299.13	\$10,401,787	\$254.65	\$10,581,875	\$256.59	\$10,662,375
Net Income (Loss)		(1,350,023)		234,983		154,483
Utilization: (days)		34,773		41,554		41,554
Max days		43,800		43,800		43,800

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

- Medicaid revenue is based on the facility's current 2021 Medicaid Regional Pricing rates.
- The facility is projected to achieve Year One occupancy of 94.6%. Occupancy for the period 2017-2020 had averaged 87.1%. As of July 27, 2022, occupancy was 94.2%. The applicant anticipates increased occupancy due to the implementation of several measures, including:
 - strengthened relationships with hospital discharge planners and referral sources,
 - staff training, development, and support,
 - acceptance of clinically complex residents,
 - implementation of staff recruitment and retention initiatives,
 - development of a dedicated short-term rehabilitation unit,
 - engagement in community outreach, and
 - Implementation of the following new programs to serve a more diverse resident population: tracheostomy care, cardiac rehabilitation, enhanced wound care, IV therapy, and complex clinical care.

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

	<u>Current Year (2021)</u>		<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Days</u>	<u>Utilization</u>	<u>Days</u>	<u>Utilization</u>	<u>Days</u>	<u>Utilization</u>
Revenues:						
Medicaid FFS	23,377	67.23%	27,936	67.23%	27,936	67.23%
Medicaid MC	2,322	6.68%	2,775	6.68%	2,775	6.68%
Medicare FFS	3,934	11.31%	4,701	11.31%	4,701	11.31%
Medicare MC	1,704	4.90%	2,036	4.90%	2,036	4.90%
Private Pay	<u>3,436</u>	<u>9.88%</u>	<u>4,106</u>	<u>9.88%</u>	<u>4,106</u>	<u>9.88%</u>
Total Revenues	34,773	100.00%	41,554	100.00%	41,554	100.00%

- The breakeven utilization is projected at 92.8% and 93.5% in the first and third years, respectively.

Asset Purchase Agreement

The applicant submitted an executed APA to acquire the RHCF's operating interests, as summarized below:

Date:	July 9, 2018
Seller:	Sunset Nursing and Rehabilitation Center, Inc
Buyer:	Sunset Operating, LLC
Term:	24 Months
Assets Acquired (Operations):	All assets, whether tangible, intangible, real, or personal, owned by the Seller and used in connection with the operation of the Facility, including, but not limited to, all rights, title, and interest in and to all Tangible Personal Property and Intangible Personal Property used in the operation of the Facility, assumed contracts, Patient Trust Funds and Property, Provider Agreements, Resident Agreements, all rights to the name Sunset Nursing and Rehabilitation Center, all security deposits, copies of all financial books and records, the Medicare and Medicaid provider agreements and numbers, all licenses and permits relating to the operations.
Excluded Assets (Operations):	Accounts receivables for periods prior to Closing, and Universal Settlement payments due the old operator, Mother's and Father's photos in the main lobby, original medicine cabinet and contents in the main lobby, original SUNSET sign in Administrative Office, original baby bassinet in the office area, 1995 tractor, all life insurance policies including cash values, Mother's desk in Administrative Office.
Assumed Liabilities:	None
Purchase Price:	\$2,350,000
Payment of the Purchase Price:	Cash at Closing

The applicant will finance the operations purchase via a \$2,350,000 loan provided by Sunset Propco, LLC, the entity purchasing the realty. The operating entity loan is non-interest bearing with payment of principal due on January 31, 2029 (no penalty for prepayment). The executed Unsecured Subordinated Note (operations loan commitment) between the parties, dated February 28, 2019, has been submitted.

Sale of Real Property Agreement

The applicant submitted an executed Real Property Agreement to acquire the RHCF's real property, as summarized below:

Date:	July 9, 2018
Seller:	Sunset Booneville Realty Corp.
Buyer:	Sunset Propco, LLC
Term:	24 Months
Assets Acquired (Real Estate):	All seller's rights, title, and interest in and to the Real Property (land, buildings, and improvements) located at 232 Academy Street, Booneville, NY (Oneida County).
Excluded Assets (Real Estate):	N/A
Purchase Price:	\$7,050,000
Payment of the Purchase Price:	\$500,000 deposited and held in escrow. \$6,550,000 due at closing. Real Estate transaction closed on 02/28/2019.

Sunset Propco, LLC executed a \$9,400,000 loan commitment with Monticello Funding to finance the combined operations and realty purchase price. The executed Loan and Security Agreement (master loan commitment) and Unsecured Subordinated Note (operations loan commitment) between the parties, each dated February 28, 2019, have been submitted. The lender will advance the loan proceeds under the master loan agreement upon approval of this application. The master loan bears interest at the 1 Month LIBOR rate + 5.65% for a two-year term. The 1 Month LIBOR was 1.67% for an estimated interest rate of 7.32%. The realty entity intends to refinance prior to the end of the master loan term.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of May 22, 2023, the facility had no outstanding Medicaid liabilities.

Lease Rental Agreement

The applicant submitted an executed lease agreement for the site, summarized below:

Premises:	A 120-bed nursing home located at 232 Academy Street, Booneville, NY (Monroe County)
Lessor:	Sunset Propco, LLC
Lessee:	Sunset Operating, LLC
Term:	40-year term
Rental:	\$1,560,000 per year (\$130,000 monthly) upon approval
Provisions:	Lessee shall pay, as additional rent before any fine, penalty, interest, or cost may be added for nonpayment thereof, all taxes, assessments, water/sewer rents, rates, and charges, charges for public utilities, excises, levies, license/permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and tenant in that there is a common member and a familial relationship between the entities.

Administrative Service Agreement (ASA)

The applicant has provided an executed ASA, with terms summarized below:

Date:	March 1, 2019
Contractor:	Vestracare LLC
Facility/Operator:	Sunset Nursing and Rehabilitation Center, Inc
Administrative Services:	Oversight of all functions related to Accounts Receivables, Accounts Payables, and Payroll; coordinate billing & collections systems; assure personnel are up-to-date on licensure requirements; assistance with the following: updating policy and procedure manual, regulatory monitoring, compliance/quality assurance, ongoing education, ensuring staff follow procedures and regulatory requirements, training curriculum, accounting, budgeting, developing reports, audits, purchasing, pharmacy assistance, and clinical consulting services.
Term:	Initial 3-Year Term, automatically renewing year to year, unless terminated by either party
Monthly Fee:	\$34,287.44
Administrative Fee:	The fees for the Services shall, to the maximum extent possible, represent the actual costs incurred by CHC in providing the services. Common costs, including, but not limited to, utilities, rent, and the salaries of the Corporate Compliance Liaison shall be allocated to each facility, including the facility that is the subject of this Agreement, that CHC provides the Services to in proportion to each facility's bed count. CHC has no intention of profiting from this agreement.

The executed ASA provides that the established operator retains ultimate authority, responsibility, and control in all the final decisions associated with the services. In accordance with the Department's ASA policy effective December 13, 2016, the terms of the executed ASA must acknowledge the reserve powers that must not be delegated, the conflicts clause provisions to ensure that the Licensed Operator retains ultimate control for the operations, and the notwithstanding clause provisions to ensure compliance with governmental agencies, statutes, and regulations. 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 purchase price for the RHCF's operations and realty is \$9,400,000 (\$2,350,000 for the operations and \$7,050,000 for the realty). Sunset Propco, LLC will obtain a \$9,400,000 loan from Monticello Funding, LLC to finance the combined purchase price and will lend Sunset Operating, LLC \$2,350,000 for the operations purchase through a non-interest-bearing loan with the principal payment due on January 31, 2029. The executed Loan and Security Agreement (master loan commitment) and Unsecured Subordinated Note (operations loan commitment) between the parties, each dated February 28, 2019, have been submitted. The lender will advance the loan proceeds under the master loan agreement upon PHHC approval of this application. The master loan bears interest at the 1 Month LIBOR rate + 5.65% for a two-year term. The 1 Month LIBOR was 1.67% for an estimated interest rate of 7.32%. The realty entity intends to refinance prior to the end of the master loan term.

The working capital requirement is estimated at \$1,763,646 based on two months of first-year expenses and will be funded with the proposed member's equity. BFA Attachment A presents a summary of the net worth of the applicant members and indicates sufficient resources to meet the equity requirement overall. Liquid resources may not be available in proportion to the members' proposed ownership interest. Orly Lieberman has submitted an affidavit confirming his willingness to contribute personal resources disproportionate to his ownership interest in the operating entity to the extent that any other member of Sunset Operating, LLC is unable to meet their equity requirements for this project. BFA Attachment A indicates that Mr. Lieberman has sufficient resources available.

The submitted budget projects net income from operations of \$234,983 in the first year and \$154,483 in the third year. The budget appears reasonable.

BFA Attachment B, Pro Forma Balance Sheet of Sunset Operating, LLC indicates positive members' equity of \$4,113,646 as of the first day of operations.

BFA Attachment C, the Financial Summary of Sunset Nursing and Rehabilitation Center, Inc, indicates that in 2020-2021 the facility had an average positive working capital position and negative net asset position. The facility incurred a net loss of (\$1,243,248) in 2020 and net income of \$2,504,176 in 2021. As of December 31, 2022, the facility reported a positive working capital position, a negative net asset position, and a net loss of \$304,397. For the period ended May 31, 2023, Sunset reported positive working capital of \$2,592,433, negative equity of (\$818,295) and an operating loss of (\$128,641). The reported operating losses are attributable to utilization of staffing agencies which provide approximately 30% of Sunset's RN and LPN staff due to difficulties in attracting and retaining nursing staff. The facility is working on reducing its reliance on outside staffing through recruitment initiatives. The reported negative net asset position is attributable to historical operating losses at the facility.

BFA Attachment D presents a financial summary of proposed members' affiliated nursing homes based on audited financial statements for the years-ended December 31, 2020, and 2021 and internal financial statements for the period ended December 31, 2022. Between 2020 and 2021, the affiliated facilities maintained positive net asset and working capital positions as well as positive net income from operations except for Autumn View, which reported negative working capital, Brookhaven, and North Gate, which reported negative working capital and net losses, Harris Hill, and Page, which reported net losses, and Wyomissing which reported negative working capital, negative equity, and a net loss. For the period ending December 31, 2022, the affiliated facilities maintained positive net assets, working capital positions, and positive net income from operations except for Autumn View, Garden Gate, Harris Hill, Massapequa, North Gate, Roscoe, and Seneca, all of which reported net losses. The reported net losses are attributable to increased operating costs, including supplies and labor, and lower-than-expected occupancy. The operators are exploring cost reduction initiatives and improving census by strengthening relationships with hospital discharge planners and referral sources and engaging in community outreach.

Conclusion

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

Attachments

BHFP	Map
LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Sunset Operating, LLC – Proposed Members' Net Worth
BFA Attachment B	Sunset Operating, LLC – Pro Forma Balance Sheet
BFA Attachment C	Sunset Nursing and Rehabilitation Center – Financial Summary 2020-2022 and May 2023 Internal Financial Summary
BFA Attachment D	Proposed Member's – Affiliated RHCFC Financial Summary 2020-2022 Internal Financial Summary
BFA Attachment E	Organization Chart – Proposed Members
BFA Attachment F	List of RHCFCs in which Mr. Orly Lieberman is concurrently seeking PHHPC approval to be established as a new operator



Project # 201263-E
**RCA Servicer at Allegany, LLC d/b/a Allegany Center for
Rehabilitation and Nursing**

Program: Residential Health Care Facility
Purpose: Establishment

County: Cattaraugus
Acknowledged: July 16, 2020

Executive Summary

Description

RCA Servicer at Allegany, LLC d/b/a Allegany Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Absolut Center for Nursing and Rehabilitation at Allegany, LLC, a 37-bed, proprietary Article 28 residential health care facility (RHCF) located at 2178 N Fifth Street Allegany, NY (Cattaraugus County). Absolut Center for Nursing and Rehabilitation at Allegany, LLC is the current operator of the facility, and 2178 N. Fifth Street, LLC is the real property owner.

On January 30, 2020, Absolut Center for Nursing and Rehabilitation at Allegany, LLC entered into an Asset Purchase Agreement (APA) with RCA Healthcare Management, LLC for the sale and acquisition of the operating interests of Absolut Center at Allegany and four other Absolut RHCFs as well as an 80-bed Adult Assisted Living Facility-Absolut at Orchard Brooke. The total purchase price of the five RHCF operations is \$750,000, of which \$36,513 is allocated to this facility.

Upon approval of this application, RCA Servicer at Allegany, LLC will lease the premises from 2178 N. Fifth Street, LLC. The four other nursing homes concurrently being reviewed are:

- CON 201264 – Aurora Center for Rehabilitation and Nursing, p/k/a Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC, a 320-bed facility located in Cattaraugus County.
- CON 201265 – Gasport Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing and Rehabilitation at Gasport, LLC, an 83-bed facility located in Niagara County.
- CON 201266 – Three Rivers Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing at Three Rivers, LLC, a 120-bed facility located in Steuben County.
- CON 201267 – Westfield Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing and Rehabilitation at Westfield, LLC, 120-bed facility located in Chautauqua County.

Orly Lieberman, one of the proposed members, is concurrently seeking PHHPC approval to be established as a new operator of Sunset Nursing and Rehabilitation Center (CON 191254), a 120-bed facility RHCF in Oneida County.

Orly Lieberman and Michael Farbenblum are concurrently seeking PHHPC approval to be established as new operators of the following three RHCFs currently operating under a receivership:

- CON 222053 – Taconic Rehabilitation and Nursing at Beacon, a 160-bed facility located in Dutchess County.
- CON 222054 – Taconic Rehabilitation and Nursing at Hopewell, a 160-bed facility located in Dutchess County.
- CON 222055 – Taconic Rehabilitation and Nursing at Ulster, a 120-bed facility located in Ulster County.

BFA Attachment C presents the combined equity analysis for the RCA and the Taconic transactions and shows the financial ability of all the parties involved to proceed with these projects. In addition, Orly Lieberman has provided a disproportionate share affidavit to provide additional funding to cover the shortfall of two of the proposed RCA facility members.

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

<u>Current Operator</u>	
<u>Absolut Center for Nursing and Rehabilitation at Allegany, LLC</u>	
<u>Members:</u>	<u>%</u>
Absolut Facilities Management, LLC	54.0%
Israel Sherman	45.0%
Sam Sherman	1.0%

<u>Proposed Operator</u>	
<u>RCA Servicer at Three Rivers, LLC d/b/a Allegany Center for Rehabilitation and Nursing</u>	
<u>Members:</u>	<u>%</u>
Orly Lieberman	47.00%
Michael Farbenblum*	23.00%
Mordechai Mendlowitz	22.50%
Menachem Tauber	7.50%

*Managing Member of the facility.

OPCHSM Recommendation
Contingent Approval

Need Summary

Occupancy, as of April 12, 2023, was 100% for the facility and 89.1% for Cattaraugus County. There will be no change to beds or services as a result of this application.

Program Summary

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

Financial Summary

There are no project costs associated with this application. RCA Servicer at Allegany, LLC, d/b/a Allegany Center for Rehabilitation and Nursing, will acquire the RHCF's operations for \$36,513, funded by members' equity.

<u>Budget:</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
	<u>2021</u>	<u>2024</u>	<u>2026</u>
Revenues:	\$4,556,944	\$4,021,852	\$4,021,852
Expensed:	<u>\$4,261,854</u>	<u>\$3,971,207</u>	<u>\$3,969,840</u>
Gain/(Loss):	\$295,090	\$50,645	\$52,012

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Approval. (See LTCOP Attachment A)

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

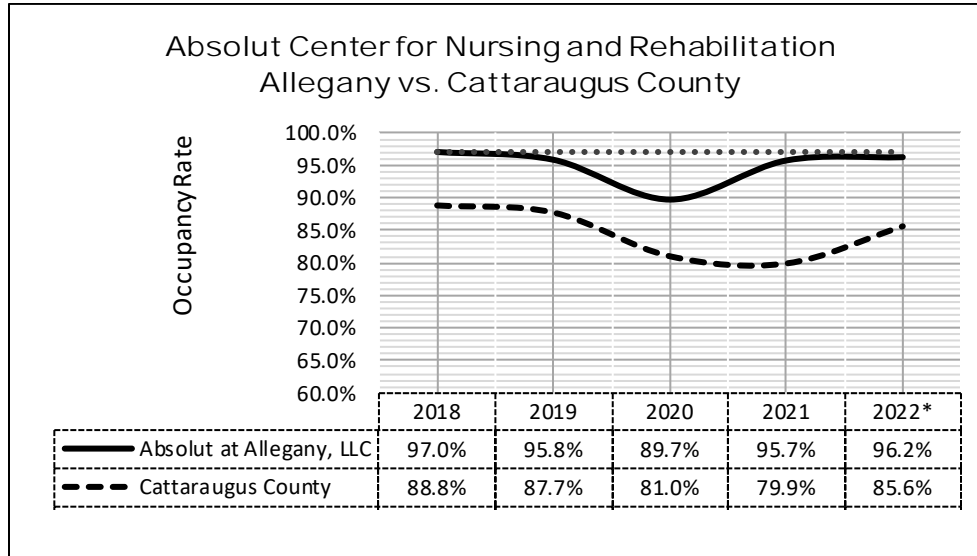
1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility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

Council Action Date
June 29, 2023

Need Analysis

Background and Analysis

The primary service area is Cattaraugus County. Based on US Census population estimates from 2021, the demographics of the county include 91.6% White, 3.7% American Indian and Alaska Native, 1.5% Black or African American, and 2.4% Hispanic or Latino.



* 2022 data is self-reported and not certified

Occupancy, as of April 12, 2023, was 100% for the facility and 89.1% for Cattaraugus County.

The facility had a 95.8% occupancy rate in 2019; then, in 2020, it declined to 89.7%, which can be attributed to the COVID-19 pandemic, 2021 represented a recovery to 95.7%.

The table below shows the CMS Rating and the utilization of the Article 28 facilities within 27 miles of Absolut Center for Nursing and Rehabilitation at Allegany.

Facility Name	Beds	CMS Overall Rating	Distance from other RHCFS	Occupancy			
				2019	2020	2021	2022
		As of 4/26/23	Miles/Time				
Absolut Center at Allegany	37	4	0 miles/0 min	95.8%	89.7%	95.7%	96.2%
The Pines Healthcare & Rehabilitation Centers Olean Campus	120	3	2.8 miles/8 min	97.57%	88.09%	82.31%	89.0%
Salamanca Rehabilitation & Nursing Center	120	1	16.8 miles/20 min	76.61%	70.69%	81.65%	87.6%
Cuba Memorial Hospital Skilled Nursing Facility	61	3	17.4 miles/21 min	85.58%	80.90%	72.32%	75.3%
The Pines Healthcare & Rehabilitation Centers Machias Campus	115	4	27.1 miles/37 min	98.28%	94.00%	88.60%	84.4%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. Higher numbers represent greater resource requirements for residents.

Case Mix Index	2019		2020		2021	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Absolut Center at Allegany	1.3148	1.0795	1.1156	1.1894	1.181	1.295
The Pines Healthcare & Rehabilitation Centers Olean Campus	1.1364	0.998	0.9948	0.9542	1.061	0.994
Salamanca Rehabilitation & Nursing Center	1.3166	1.0647	1.2194	1.1116	1.407	1.355
Cuba Memorial Hospital Skilled Nursing Facility	1.0483	0.9119	0.97	0.8603	1.096	1.008
The Pines Healthcare & Rehabilitation Centers Machias Campus	1.0129	0.9622	1.0104	1.0012	1.031	0.983

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

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

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage. This facility's Medicaid admissions rate was below the threshold of 75% of the Cattaraugus County rate for 2019 through 2021.

Medicaid Access	2019	2020	2021
Cattaraugus County Total	25.4%	30.8%	31.1%
<i>Cattaraugus Threshold Value</i>	<i>19.0%</i>	<i>23.1%</i>	<i>23.3%</i>
Absolute Center for Nursing at Allegany	13.8%	19.8%	6.5%

Conclusion

There will not be any changes to beds or services resultant of this change in ownership. Based on weekly census data, occupancy on April 12, 2023, was 100% for the facility and 89.1% for Cattaraugus County.

Program Analysis

Program Description

This application proposes to establish RCA Servicer at Allegany, LLC as the new operator of the 37-bed residential health care facility located at 2178 North Fifth Street, Allegany, currently operated as Absolut Center for Nursing and Rehabilitation at Allegany.

Facility Information

	Existing	Proposed
Facility Name	Absolut Center for Nursing and Rehabilitation at Allegany, LLC	Allegany Center for Rehabilitation and Nursing
Address	2178 North Fifth Street Allegany, NY 14706	Same
RHCF Capacity	37	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Absolut Center for Nursing and Rehabilitation at Allegany, LLC Membership: Israel Sherman 45% Samuel Sherman 1% Absolute Facilities Management, LLC 54% Israel Sherman (100%)	RCA Servicer at Allegany, LLC Membership: Menachem Tauber 7.5% Michael Farbenblum 23% Mordechai Mendlowitz 22.5% Orly Lieberman 47%

Character and Competence

Orly Lieberman lists employment concurrently as a Psychotherapist at the Private Practice of Orly Lieberman, which conducts individual and family psychotherapy sessions located in Valley Stream, NY, since November 2020, and as a Pre-Marital Counselor (Kallah Teacher) since January 2006. Orly Lieberman holds a master's degree in Clinical Mental Health Counseling from St. John's University. Orly Lieberman is licensed as a mental health counselor in New York State and discloses the following ownership interests in health facilities:

Nursing Homes

Sunset Nursing and Rehabilitation Center (N.Y.) (9.9%)	02/2019 to present
Roscoe Rehabilitation and Nursing Center (N.Y.) (1%)	08/2018 to present
Autumn View Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Brookhaven Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Garden Gate Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Harris Hill Nursing Facility, LLC (N.Y.) (50%)	03/2017 to present
North Gate Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Seneca Health Care Center, LLC (N.Y.) (50%)	03/2017 to present
Golden Hill Nursing & Rehabilitation Center (N.Y.) (9.54%)	01/2020 to present
Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation at Westfield (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (47%)	Pending
Taconic Rehabilitation and Nursing at Beacon (N.Y.) (60%)	Pending
Taconic Rehabilitation and Nursing at Hopewell (N.Y.) (60%)	Pending
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (60%)	Pending

End Dated Ownership

Bishop Rehab and Nursing Center (N.Y.) (1%) 12/2017 to 09/2022

Menachem Tauber lists current employment at Preventive Diagnostic Inc., a Mobile X-ray/Ultrasound company located in Brooklyn, NY, as CEO since 2010. Menachem Tauber holds a high school diploma from Yeshiva Belz Monsey and discloses the following health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Westfield (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (7.5%)	Pending

Diagnostic & Treatment Center

Preventive Diagnostics INC. (portable x-ray) (N.Y.) (100%) 04/2010 to present

Michael Farbenblum lists concurrent employment at The McGuire Group, which is a skilled nursing and rehabilitation business located in Valley Stream, NY, as General Counsel since 2019, and Mr. Farbenblum is also self-employed as a consultant providing legal services and business consulting primarily to skilled nursing facilities and related entities since 2016. Michael Farbenblum holds a Master of Laws degree from New York University School of Law. He is licensed as both a real estate broker as well as an attorney in New York State and is also licensed as an attorney in Connecticut. Mr. Farbenblum discloses the following health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation at Westfield (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (23%)	Pending
Taconic Rehabilitation and Nursing at Beacon (N.Y.) (20%)	Pending
Taconic Rehabilitation and Nursing at Hopewell (N.Y.) (20%)	Pending
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (20%)	Pending

Receivership Nursing Homes

Taconic Rehabilitation and Nursing at Beacon (N.Y.) (50%)	07/2022 to present
Taconic Rehabilitation and Nursing at Hopewell (NY) (50%)	07/2022 to present
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (50%)	07/2022 to present

End Dated Ownership

The Hamptons Center for Rehabilitation & Nursing (N.Y.) (5%) 01/2009 to 2/2016

Mordechai Mendlowitz lists concurrent employment at Rubin & Mendlowitz, an elder law legal group, as a partner located in Cedarhurst, NY, since 2014 and Family Guardian Services, Inc., a not-for-profit agency providing Article 81 guardianship services as Executive Director located in Cedarhurst, NY since 2017. Mordechai Mendlowitz holds a Juris Doctor degree from Fordham University School of Law. Mr. Mendlowitz is licensed as both a real estate broker as well as an attorney in New York State. Mordechai Mendlowitz does not disclose any health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Westfield (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (22.5%)	Pending

Quality Review

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

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership					
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	<u>< 48 Months</u>		<u>48 months or more</u>	
		<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>
Orly Lieberman	9	1	100%	8	12.50%
Menachem Tauber	0	NA	NA	NA	NA
Michael Farbenblum	3	3	100%	NA	NA
Mordechai Mendlowitz	0	NA	NA	NA	NA

DURATION OF OWNERSHIP AS OF 6/29/2023

Data date: 4/2023

New York - The proposed owner's portfolio includes ownership in nine New York facilities, and Michael Farbenblum became the receiver of three New York facilities. Eight of the New York facilities in the ownership portfolio have a CMS overall quality rating of average or higher. The remaining facility Sunset Nursing and Rehabilitation Center, has a CMS overall quality rating of much below average. When asked to explain the low overall CMS ratings for Sunset Nursing and Rehabilitation Center, the applicants indicated the following. The applicants were also asked to explain what was being done to improve the CMS quality rating at the Taconic facilities currently operated under receivership.

Sunset Nursing and Rehabilitation Center's one-star overall CMS quality rating is largely attributable to staffing challenges that have impacted care delivery. Recruiting staff in rural Boonville, New York, is very difficult. Several steps have been taken to address quality and improve operations, including implementing a new Electronic Medical Record-Point Click Care in March 2019, which has improved efficiency and outcomes across all disciplines. The members of the operating entity ("members") have also integrated the facility's policies and procedures with those of their larger organizations to take advantage of best practices. This was a key factor in assisting the facility to maintain operations throughout the pandemic. In September 2021, the members supplied additional recruiter positions at the facility and throughout the organization to focus on interviewing and hiring staff. Additionally, in January 2022, the members strengthened the facility's clinical team by supplying Regional Quality Assurance nurses to provide routine audits of regulatory requirements. On October 3, 2022, the facility hired a new administrator who has over 15 years of experience and a strong history with survey performance.

The following is a list of initiatives that have been implemented to improve CMS quality ratings at Taconic Rehabilitation and Nursing at Beacon, Taconic Rehabilitation and Nursing at Hopewell, and Taconic Rehabilitation and Nursing at Ulster:

- *Recruitment and Retention Initiatives*
 - *New rates of pay for direct care staff (CNAs, LPNs, and R.N.s) have been implemented through the new collective bargaining agreement.*
 - *New recruitment incentive programs have been implemented.*
 - *Certified Nursing Aide Training Program teaching and testing sites located at Beacon and Hopewell.*
 - *Evaluation of Systematic processes and data for successful recruitment. Onboarding and retention of new staff, which will incorporate "Best Practices" for all Taconic facilities.*
- *Management Briefings. Beginning in March 2023, management Briefings will be held with each department head and the Administrator, the Regional V.P.s, CNO, and CEO every 8 weeks to review and discuss each aspect of the building and its operations to identify opportunities for improvement and development of a deeper understanding of each facility's operations and unique issues.*

- **Capital Improvements.** Capital improvements will be reviewed every 8 weeks at the Management Briefings to ensure staff have the supplies and equipment necessary to provide safe and effective care. Recent capital purchases include new air mattresses, therapy equipment, wheelchairs, wheelchair cushions, vital machines, and washers and dryers.
- **Information Technology.** Significant upgrades impacting all aspects of the I.T. system and infrastructure have been made, including new computers, wiring, wireless internet access, and the purchase of iPads to assist CNAs with documentation. The cumulative effect of these upgrades has resulted in improved electronic communications and workflow, allowing for more time at the resident bedside. Further, the I.T. system enhancements will allow the facility teams to proactively monitor Quality Measures and, where indicated, develop and implement QAPI projects to improve quality measures.
 - Electronic medical record systems have been updated to Point Click Care at Beacon, with the anticipated completion of 3/31/23 at Hopewell and an anticipated completion of 6/2023 at Ulster.
 - Utilization of a real-time Medical System (RTMS), which will be operational by the end of March 2023 and will work in collaboration with PCC.
 - Utilization of StarPro which will provide live updates to the Quality Measures as MDSs are closed, identify residents the trigger for each indicator, and allow the facility to identify trends and implement QAPI programs.
- **Education.** A new education platform, SNF Clinic, will be implemented. This platform will be available to all employed staff and assist them in completing annual mandatory trainings, staff competency trainings, general education trainings, and education related to identified trends.
- **Clinical Support and Guidance.** The regional Team consisting of subject matter experts in the areas of rehabilitation services, MDS, social services, and clinical systems will provide support to facilities.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Absolut Center for Nursing and Rehabilitation at Allegany, LLC	Subject Facility	***	**	*****	**
Sunset Nursing and Rehabilitation Center	Current	*	*	***	*
	02/2019	*	*	**	*
Roscoe Rehabilitation and Nursing Center	Current	****	****	*****	*
	08/2018	*****	****	*****	***
Autumn View Health Care Facility, LLC	Current	****	****	*****	*
	03/2017	*****	****	*****	***
Brookhaven Health Care Facility, LLC	Current	*****	****	*****	***
	03/2017	*****	****	*****	*****
Garden Gate Health Care Facility, LLC	Current	****	****	*****	*
	03/2017	*****	****	*****	****
Harris Hill Nursing Facility, LLC	Current	***	****	****	*
	03/2017	*****	****	*****	****
North Gate Health Care Facility, LLC	Current	****	*****	***	*
	03/2017	****	***	****	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Seneca Health Care Center, LLC	Current	*****	****	*****	**
	03/2017	*****	****	*****	****
Golden Hill Nursing & Rehabilitation Center	Current	***	***	****	**
	01/2020	*****	****	*****	**
Taconic Rehabilitation and Nursing at Beacon	Current	**	**	**	***
	07/2022	**	**	**	***
Taconic Rehabilitation and Nursing at Hopewell	Current	**	**	***	****
	07/2022	**	**	**	***
Taconic Rehabilitation and Nursing at Ulster	Current	**	**	***	***
	07/2022	*	*	***	**

Data date: 4/2023

End Dated Ownership					
New York					
Bishop Rehab and Nursing Center	09/2022	SFF	SFF	SFF	SFF
	12/2017	*	*	**	*
The Hamptons Center for Rehabilitation & Nursing	02/2016	***	***	**	**
	01/2009	*	*	**	**

Enforcement History

A review of the operations of Sunset Nursing and Rehabilitation Center for the time period indicated above reveals the following:

- The facility was assessed a federal CMP in the amount of \$6,923.00 and fined \$2,000.00 pursuant to Stipulation and Order NH-21-206 for surveillance findings on 07/21/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of Roscoe Rehabilitation and Nursing Center for the time period indicated above reveals no enforcements.

A review of the operations of Autumn View Health Care Facility, LLC, for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$650.00 on 07/19/2021 for failure to report COVID data.

A review of the operations of Brookhaven Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-006 for surveillance findings on 11/16/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was assessed a federal CMP of \$650.00 on 08/30/2021 and \$975.00 on 09/13/2021 for failure to report COVID data.

A review of the operations of Garden Gate Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-22-053 for surveillance findings on 02/11/2022. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of Harris Hill Nursing Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-070 for surveillance findings on 03/17/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-071 for surveillance findings on 01/08/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of North Gate Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$6,000.00 pursuant to Stipulation and Order NH-22-062 for surveillance findings on 08/21/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was assessed a federal CMP of \$650.00 on 08/02/2021, \$975.00 on 08/09/2021, and \$1,316.00 on 01/17/2022 for failure to report COVID data.

A review of the operations of Seneca Health Care Center, LLC for the time period indicated above reveals the following:

- The facility was fined \$10,000.00 pursuant to Stipulation and Order NH-23-041 for surveillance findings on 01/12/2023. Deficiencies were found under 415.12(h)(2) Quality of Care. The facility failed to ensure that each resident received adequate supervision to prevent accidents.

A review of the operations of Golden Hill Nursing & Rehabilitation Center for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-234 for surveillance findings on 08/31/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was fined \$8,000.00 pursuant to Stipulation and Order NH-20-034 for surveillance findings on 06/22/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- A federal CMP in the amount of \$3,250.00 was also assessed for the surveillance findings on 6/22/2021.
- The facility was assessed a federal CMP of \$655.00 on 01/04/2021 for failure to report COVID data.

A review of Bishop Rehab and Nursing Center for the period specified above reveals the following:

- The facility was assessed a federal CMP of \$75,582.00 and fined \$6,000.00 pursuant to Stipulation and Order# 23-007 issued for surveillance findings on September 7, 2022. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of care Medication Errors. The facility failed to administer prescribed anti-organ rejection medication to a resident for four days and failed to notify the physician of the error. Additionally, the facility failed to administer bi-weekly medication for anemia to the same resident and failed to notify the physician or reschedule the missed dose. The facility also failed to administer monthly intravenous medication to a resident during their stay at the facility and failed to ensure that the medication be administered to the resident following their discharge.
- The facility was assessed a federal CMP of \$9,750.00 and fined \$6,000.00 pursuant to Stipulation and Order# 22-144 issued for surveillance findings on May 4, 2022. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care Adequate Supervision, NYCRR 66-4.1 Vaccinations of Nursing Home Residents and Personnel, and 10 NYCRR 415.19 Infection Control. The facility failed to ensure each resident was offered the COVID-19 vaccine and provide education regarding the benefits and risks, and potential side effects associated with the vaccine. The facility was cited for failure to ensure staff donned a mask before entering the room of a resident who was unvaccinated for influenza and COVID-19. The facility was also cited for failure of a staff member to perform hand hygiene after removing an unclean wound dressing and cleaning a resident's wound.
- On 08/14/2019, the facility was cited for failure to honor the resident's right to request, refuse, and/or discontinue treatment, to participate in or refuse to participate in experimental research, and to formulate an advance directive. Federal Tag 578 at a G level.

- The facility was assessed a federal CMP of \$8,223.00 and fined \$2,000.00 pursuant to Stipulation and Order # 19-052 issued for surveillance findings on August 14, 2019. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii) Request/ Refuse/ Discontinue Treatment, Formulate Advance Directives.
- The facility was assessed a federal CMP of \$8,096.00 on 12/20/2019 for failure to protect each resident from all types of abuse, such as physical, mental, sexual abuse, physical punishment, and neglect by anybody under Federal Tag 600 at a G level.
- On 12/04/2020, the facility was cited for failure to provide appropriate treatment and care according to orders, residents' preferences, and goals under Federal Tag 684 at a G level.
- The facility was assessed a federal CMP of \$19,523.00 during a Covid-19 Infection Control Survey on 12/02/2020 under Federal tag 880 for failure to provide and implement an infection prevention and control program.
- The facility was assessed federal CMP of \$66,319.00 and \$15,000.00 on 09/03/2021 under Federal Tag 836 for failure to ensure the facility is licensed under applicable state and local law and operates and provides services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards.
- On 10/25/2021, the facility was assessed a federal CMP of \$81,319.00 for failure to prepare residents for a safe transfer or discharge from the nursing home under Federal Tag 624 at a G level.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on September 23, 2021. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care Adequate Supervision. The facility failed to supervise a resident at risk of elopement, who attempted to elope through their third-story window, resulting in fatal injuries. The facility was cited for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents. Federal Tag 689 at a J level.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on September 20, 2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control. Facility staff was observed wearing their face mask below their nose.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on October 25, 2021. Deficiencies were found under 10 NYCRR 415.3(i) Transfer and Discharge Rights. The facility discharged a resident without ensuring the resident, PHL surrogate, or a family member understood the discharge and with the medications ordered for a different resident. The resident ingested these medications for seven days and subsequently went into cardiac arrest.
- The facility was fined \$14,000.00 pursuant to Stipulation and Order # 21-200 issued for surveillance findings on January 17, 2020, and September 25, 2020. Deficiencies were found under 10 NYCRR 415.12. On 09/25/2020, the facility did not reassess a resident who fell and complained of severe pain when the resident's clinical condition did not improve; the facility failed to timely implement a stat order for an x-ray. On 01/17/2020, the facility did not timely perform a blood clotting test (PT/INR) as ordered for a resident on blood thinning medications. Also, the facility did not implement an order to treat a resident's skin reaction to a therapeutic treatment.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 21-168 issued for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.12(f)(1)(2). The facility failed to ensure residents received treatment and care in accordance with professional standards of practice.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 21-041 issued for surveillance findings on December 20, 2019, and September 17, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and (2), 400.2, and 415.4(b). The facility failed to maintain an infection control program by failing to enforce PPE requirements and had four events of not wearing a face mask within six feet of a resident. Also, the facility failed to ensure a resident was not free from abuse, and staff immediately reported abuse.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order # 19-052 issued for surveillance findings on August 14, 2019. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii), Right to Privacy. Each resident shall have the right to personal privacy and confidentiality of his or her personal and clinical records, which shall reflect the resident's right to approve or refuse the release of personal and clinical records to any individual outside the facility except when the resident is transferred to another health care institution; or record release is required by law.

A review of the operations of Taconic Rehabilitation and Nursing at Beacon for the time period indicated above reveals no enforcements.

A review of the operations of Taconic Rehabilitation and Nursing at Hopewell for the time period indicated above reveals no enforcements.

A review of the operations of Taconic Rehabilitation and Nursing at Ulster for the time period indicated above reveals no enforcements.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the Current Year (2021) results, and the First (2024) and Third (2026) year operating budget, in 2023 dollars, after the change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2024</u>		<u>2026</u>	
<u>Revenues:</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicare FFS	\$612.85	\$1,329,889	\$589.85	\$1,298,260	\$589.85	\$1,298,260
Medicare MC	\$372.36	\$311,667	\$488.38	\$414,635	\$488.38	\$414,635
Medicaid FFS	\$186.26	\$1,461,394	\$199.52	\$1,587,581	\$199.52	\$1,587,581
Medicaid MC	\$224.51	\$121,012	\$230.12	\$125,646	\$230.12	\$125,646
Private Pay	\$381.00	\$581,793	\$384.59	\$595,730	\$384.59	\$595,730
Other Oper Rev		\$628,400				
Non-Op Rev		<u>\$349,869</u>				
Total Revenue		\$4,556,944		\$4,021,852		\$4,021,852
 <u>Expenses:</u>						
Operating	\$284.79	\$3,679,210	\$255.77	\$3,351,069	\$254.39	\$3,332,971
Capital	<u>\$45.10</u>	<u>\$582,644</u>	<u>\$46.17</u>	<u>\$604,948</u>	<u>\$47.93</u>	<u>\$627,950</u>
Total Expenses	\$329.89	\$4,261,854	\$301.94	\$3,971,207	\$302.32	\$3,969,840
Net Income/ (Loss)		<u>\$295,090</u>		<u>\$50,645</u>		<u>\$52,012</u>
Patient Days		12,919		13,102		13,102
Utilization %		95.66%		97.01%		97.01%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2021 payors and 2021 RHCF-4 cost report information. Historical utilization for the base year 2021 was 95.66%.
- The Medicaid Fee for Service reimbursement rate in Years One and Three is based on the facility's 2022 Nursing Home Rate.
- The rates for Medicare Managed Care, Medicaid Managed Care, and Private Pay in Years One and Three are based upon the average rate by payor through July 2022.
- Utilization is expected to increase over the current year's utilization of 95.66% to 97.01% in Years One and Three because of strengthening relationships with hospital discharge planners, the establishment of new referral relationships, and engagement in community outreach programs.
- Projected utilization in Years One and Three is based on the facility's most recent census and payer mix.
- The decline in Medicaid Managed Care utilization is due to the carve-out of nursing home benefits from managed long-term care.

Utilization by payor source before and after the change in ownership is as follows:

	<u>Current Year</u>	<u>Years One & Three</u>
	<u>2021</u>	<u>2024 & 2026</u>
Medicare-FFS	15.08%	16.80%
Medicare-MC	6.48%	6.48%
Medicaid-FFS	60.73%	60.73%
Medicaid-MC	4.17%	4.17%
Private Pay	11.82%	11.82%
Other Insurance	<u>1.72%</u>	<u>0%</u>
Total	100%	100%

- Breakeven utilization is projected at 95.79% or 12,937 patient days for Year One and 95.76% or 12,933 patient days for Year Three.
- The facility's Medicaid admissions of 13.8% in 2019, 19.8% in 2020, and 6.5% in 2021 are below Erie County's 75% threshold rate of 19% in 2019, 23.1% in 2020, and 23.3% in 2021. To strengthen the facility's admissions process, the operator will develop a community outreach program to inform surrounding hospitals, home health agencies, assisted living facilities, and adult care facilities of the change in ownership of the facility and that they intend to provide priority to Medicaid recipients seeking admission to residential health care facilities and offer services to difficult to place residents.

Asset Purchase Agreement

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

Date:	January 30, 2020
Sellers:	Absolut Center for Nursing and Rehabilitation at Allegany, LLC Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC Absolut Center for Rehabilitation at Gasport, LLC Absolut at Orchard Brooke, LLC Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC Absolut Center for Nursing Rehabilitation at Westfield, LLC and Absolut Facilities Management, LLC
Purchaser:	RCA Healthcare Management, LLC
Acquired Assets:	Business and operation of each facility and all inventory, supplies and articles of personal property, including collective bargaining agreements, leases, all facilities contracts, agreements, leases, undertakings, commitments and other arrangements and all contracts entered into on or after ASA effective date with the consent of the seller by the ASA servicer, trade names, logos, trade and service marks associated with the facilities, programs, and acquired assets, all menus, policies and procedures manuals, computer software, copies of all books and records relating to the facilities, all resident/patient records relating to the facilities, and all employee and payroll records of transferred employees, goodwill, transferrable Medicare and Medicaid provider numbers and agreements, rate increases and/or lump sum or other payments, with respect to third party payments, transferable rights to warranties, tangible or intangible assets owned by sellers used or necessary for, the operation of the facilities other than excluded assets.
Excluded Assets:	All insurance policies and claims, and proceeds, relating to events before the ASA effective date, rights and interests of the seller under this agreement and any documents executed in connection with the closing, retroactive rate increases, third-party payments from any source, which become effective before, on or after the closing date for services rendered before the ASA effective date and accounts receivables and proceeds, claims, rights, causes of action, right of recovery, rights of set off and recoupment against any third parties(including any governmental authority and third-party payor programs, Medicare, Medicaid, or private insurance plans and employee assistance program) from the operation of the facilities through end of the day preceding the ASA effective date, sellers' personal property, any assets of the seller not used in connection with the operation of any facility.

Assumed Liabilities:	All liabilities and obligations relating to the facility and/or the acquired assets arising on or after the ASA effective date, including sellers accounts payable and other liabilities, healthcare, Medicare and Medicaid overpayment and assessment liabilities, liabilities under the assumed contracts, all COBRA and WARN obligations, any liabilities arising out of the ownership or operation of the facilities, seller's liabilities relating to any employees of seller, any liability arising from claims of Medical malpractice and other professional liability of seller or any of its employees, agents or independent contractors, all of seller's accounts payable, any obligations to pay U.S. Trustee fees, any liabilities under any contracts that are not assumed contracts, any loan obligations, including related and intercompany loans, payables, or other obligations other than liabilities concerning the loans or financings of buyer other than any capital leases the reimbursement of which are included in the facilities Medicaid rate.
Purchase Price:	The total price for the facilities included in the APA is \$750,000. \$36,513 is allocated to this application.
Payment of Purchase Price:	\$75,000 deposit due upon execution of this agreement, \$75,000 on the second anniversary of the ASA Effective Date, \$250,000 on the third anniversary of the ASA Effective Date, and the final payment of \$350,000 due on the fourth anniversary of the ASA effective date, plus the amount of all cure costs associated with the assumption and assignment of the assumed contracts (other than leases payable upon closing).

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

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of 5/22/2023, the facility had outstanding Medicaid liabilities of \$101,590.72.

Assignment Agreement

The applicant submitted an executed AA to acquire the membership interests in the facility lease. The terms are summarized below:

Date:	May 6, 2020
Landlord:	2178 N. Fifth Street, LLC
Assignor:	Absolut Center for Nursing and Rehabilitation at Allegany, LLC
Assignee:	RCA Servicer at Allegany, LLC
Assignment:	Lease for the 37-bed RHC located at 2178 N. Fifth Street, Allegany, NY

Lease Agreement

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

Date:	March 31, 2020
Premises:	37-bed RHC located at 2178 N Fifth Street, Allegany, NY (Cattaraugus County)
Landlord:	2178 N. Fifth Street, LLC
Tenant	RCA Servicer at Allegany, LLC
Term:	17 years ending June 7, 2037
Rent:	\$339,210 Annually, with an annual increase of 2.25%
Provisions:	Taxes, insurance, repairs and maintenance, improvements, and alterations.

The lease arrangement is an arm's length agreement. The applicant has submitted two rent reasonableness letters from New York State Licensed Realtors attesting to the reasonableness of the per-square-foot rental.

Administrative Services Agreement

The applicant provided an executed Administrative Services Agreement, summarized below:

Date:	May 27, 2020
Established Operator:	RCA Servicer at Allegany, LLC
Servicer:	RCA Healthcare Management, LLC
Term:	12 months with infinite 1-year renewals until terminated by either or both parties
Responsibilities of the Servicer:	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, RHC 4 reports and Medicare cost reports. Review rate sheets and assisting with filing necessary appeals.
Compensation:	\$156,572.52 per year or \$13,047.71 a month

The agreement provides that the facility operator will retain ultimate control in all the final decisions associated with the facility. The applicant 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.

To strengthen the facility's admissions process, the operator will develop a community outreach program to inform surrounding hospitals, home health agencies, assisted living facilities, and adult care facilities of the change in ownership of the facility and that they intend to provide priority to Medicaid recipients seeking admission to residential health care facilities and offer services to difficult to place residents. In addition, RCA Healthcare Management, LLC provides consulting services to the other RHCs owned and operated by RCA Servicer.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the RHC's operations is \$36,513 and will be met with members' equity. BFA Attachment A, proposed members' net worth summaries, reveals sufficient equity overall.

The working capital requirement is \$661,868 based on two months of first-year expenses. Working capital will be satisfied with \$330,934 of equity from the proposed members, and the remaining working capital need of \$330,934 will be met with a bank loan. The facility provided a letter of interest from Metropolitan Commercial Bank for this financing at 5% interest and a five-year term. BFA Attachment A, the proposed member's net worth summary shows enough assets overall to meet the acquisition and working capital equity requirements. As previously noted, a disproportionate share affidavit was provided by Orly Liberman to cover any member's equity shortfall. BFA Attachment E provides the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$317,872.

The submitted budget indicates a net income of \$50,645 and \$52,012 in Year One and Three, respectively. Revenue growth is based on the recovery of occupancy rates to 2019 pre-pandemic levels, strengthened relationships with hospital discharge planners, and improved referrals. The budget appears reasonable.

BFA Attachment F presents the certified and internal financial summary of Absolut Center for Nursing and Rehabilitation at Allegany, LLC, for 2020 through 2021 and the period ending 12/31/2022. As shown, the 2020-2021 certified financials indicate the facility had an average positive net asset position of \$90,977, an average positive working capital position of \$23,634, and an average operating loss of \$1,061,083. The loss was due to the COVID-19 pandemic and its impact on the overall operations of the facility. For the period ending 12/31/2022, the facility achieved a positive net asset position of \$5,953 and a negative working capital position of \$539,700, generating a net loss of \$108,282. The applicant indicated that the

reported loss is attributable to increases in operating expenses, including supplies and labor. In addition, the operator is exploring renegotiating vendor contracts to reduce expenses.

BFA Attachment D presents a financial summary of proposed members' affiliated nursing homes based on audited financial statements for the years-ended December 31, 2020, and 2021 and internal financial statements for the period ended December 31, 2022. Between 2020 and 2021, the affiliated facilities maintained positive net asset and working capital positions as well as positive net income from operations with the exception of Autumn View and Golden Hill, which reported negative working capital, Brookhaven and North Gate, which reported negative working capital and net losses, Harris Hill and Seneca which reported a net loss, Roscoe which reported, negative equity, and Sunset which reported negative working capital, negative net equity, and a net loss. For the period ending December 31, 2022, the affiliated facilities maintained positive net assets and working capital positions except for Sunset, which reported a \$35,705 equity shortfall. During the same period, the affiliated facilities reported positive net income from operations, with the exception of Autumn View, Garden Gate, Harris Hill, North Gate, Roscoe, Seneca, and Sunset Nursing, all of which reported net losses. The reported net losses are attributable to lower-than-expected occupancy and higher-than-expected staffing costs. To address these losses, the operators are exploring ways to reduce their reliance on staffing agencies, implementing excess operating cost reduction initiatives, as well as improving census by strengthening relationships with hospital discharge planners and referral sources and engaging in community outreach.

Conclusion

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

<h2>Attachments</h2>

Map	Map
LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net worth summary, members of RCA Servicer at Allegany, LLC d/b/a Allegany Center for Rehabilitation and Nursing
BFA Attachment B	Organizational Chart of Original, Proposed and Current Members of the RHCF Operations and Realty
BFA Attachment C	Equity Requirement for Operations
BFA Attachment D	Financial Summary of Proposed Member's Affiliated RHCFs
BFA Attachment E	Pro Forma Balance Sheet Absolut Center for Nursing and Rehabilitation at Allegany, LLC
BFA Attachment F	2020-2021 Certified and 12/31/22 Internal Financial Summary as of Absolut Center for Nursing and Rehabilitation at Allegany, LLC



Project # 201264-E
**RCA Servicer at Aurora Park, LLC d/b/a Aurora Center for
Rehabilitation and Nursing**

Program: Residential Health Care Facility **County:** Erie
Purpose: Establishment **Acknowledged:** July 17, 2020

Executive Summary

Description

RCA Servicer at Aurora Park, LLC d/b/a Aurora Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC, a 320-bed, proprietary Article 28 residential health care facility (RHCF) located at 292 Main Street, East Aurora, NY (Erie County). Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC is the current operator of the facility at 292 Main Street, and 290 Main Street, LLC is the current real property owner.

On January 30, 2020, Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC entered into an Asset Purchase Agreement (APA) with RCA Healthcare Management, LLC for the sale and acquisition of the operating interests of Absolut Center at Aurora Park and four other Absolut RHCFs, as well as an 80-bed Adult Assisted Living Facility-Absolut at Orchard Brooke. The total purchase price of the five RHCF operations is \$750,000, of which \$315,789 is allocated to this facility.

Upon approval of this application, RCA Servicer at Aurora Park, LLC will lease the premises from 290 Main Street, LLC.

The four other nursing homes concurrently being reviewed are:

- CON 201263 – Allegany Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing and Rehabilitation at Allegany, LLC, a 320-bed facility located in Cattaraugus County,
- CON 201265 – Gasport Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing and Rehabilitation at Gasport, LLC, an 83-bed facility located in Niagara County.
- CON 201266 – Three Rivers Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing at Three Rivers, LLC, a 120-bed facility located in Steuben County.
- CON 201267 – Westfield Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing and Rehabilitation at Westfield, LLC, 120-bed facility located in Chautauqua County.

Orly Lieberman, one of the proposed members, is concurrently seeking PHHPC approval to be established as a new operator of Sunset Nursing and Rehabilitation Center (CON 191254), a 120-bed facility RHCF in Oneida County.

Orly Lieberman and Michael Farbenblum are concurrently seeking PHHPC approval to be established as new operators of three RHCFs currently operating under a receivership and are as follows:

- CON 222053 – Taconic Rehabilitation and Nursing at Beacon, a 160-bed facility located in Dutchess County.
- CON 222054 – Taconic Rehabilitation and Nursing at Hopewell, a 160-bed facility located in Dutchess County.
- CON 222055 – Taconic Rehabilitation and Nursing at Ulster, a 120-bed facility located in Ulster County.

BFA Attachment C presents the combined equity analysis for the RCA and Taconic transactions and shows the financial ability of all the parties involved to proceed with these projects. In addition, Orly Lieberman has provided a disproportionate share affidavit to provide additional funding to cover the shortfall of two of the proposed RCA facility members.

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

<u>Current Operator</u>	
<u>Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC</u>	
<u>Members:</u>	<u>%</u>
Absolut Facilities Management, LLC	54.0%
Israel Sherman	45.0%
Sam Sherman	1.0%
Total	100.0%

<u>Proposed Operator</u>	
<u>RCA Servicer at Aurora Park, LLC d/b/a Aurora Center for Rehabilitation and Nursing</u>	
<u>Members:</u>	
Orly Lieberman	47.00%
Michael Farbenblum*	23.00%
Mordechai Mendlowitz	22.50%
Menachem Tauber	7.50%

* *Managing member of the facility*

OPCHSM Recommendation Contingent Approval

Need Summary

Occupancy as of April 12, 2023, was 48.4% for the facility and 84.0% for Erie County. There will be no changes to beds or services through the completion of this application.

Program Summary

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

Financial Summary

There are no project costs associated with this application. RCA Health Management, LLC will acquire the RHCF's operations for \$315,789, funded by members' equity.

<u>Budget:</u>	<u>Current Year</u> <u>(2021)</u>	<u>Year One</u> <u>2024</u>	<u>Year Three</u> <u>2026</u>
Revenues:	\$27,469,234	\$31,940,508	\$32,612,843
Expenses:	<u>\$27,989,685</u>	<u>\$31,756,382</u>	<u>\$31,947,712</u>
Gain/(Loss):	(\$520,451)	\$184,126	\$665,131

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed working capital loan acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR].

Approval conditional upon:

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

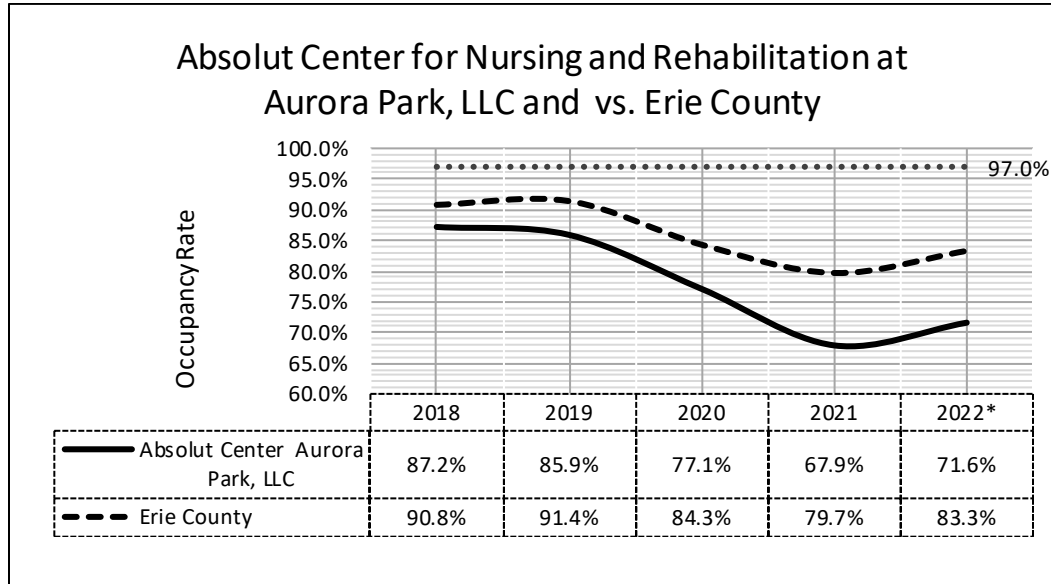
Council Action Date

June 29, 2023

Need Analysis

Background and Analysis

The primary service area is Erie County. Based on U.S. Census population estimates from 2021, the demographics of the county include 78.8% White, 13.8% Black or African American, 4.3% Asian, with 6.0% Hispanic or Latino.



* 2022 data is self-reported and not certified

Occupancy as of April 12, 2023, was 48.4% for the facility and 84.0% for Erie County.

According to the applicant, the decrease in utilization at Aurora Park resulted from limiting admissions to reduce reliance on agency staff.

The applicant has also implemented community outreach programs, mentor traineeship, and a more proficient operating procedure to assist in the retention and recruitment of additional staff. The decrease in the patient census has allowed the facility to explore additional services such as wound care and a working relationship with Roswell Cancer Institute. These new programs are anticipated to improve patient census.

The table below shows the CMS Rating and the utilization of the Article 28 facilities within 14 miles of Absolut Center for Nursing at Aurora Park.

Facility Name	Beds	CMS Overall Rating	Distance from other RHCfs	Occupancy			
				2019	2020	2021	2022
		As of 4/26/23	Miles/Time				
Absolut Center at Aurora Park	320	2	0 miles/0 mins	85.90%	77.10%	67.90%	71.6%
Father Baker Manor	160	5	8.4 miles/15 mins	93.72%	83.86%	81.01%	82.8%
Fox Run at Orchard Park	60	5	8.2 miles/15 mins	86.20%	86.33%	82.12%	83.2%
Greenfield Health & Rehab Center	160	1	10.2miles /18 mins	95.92%	91.52%	83.93%	75.5%
Elderwood at Lancaster	96	5	11 miles/20 mins	94.41%	90.04%	85.48%	92.1%
Seneca Health Care Center	160	5	13 miles/18 mins	95.30%	84.00%	80.05%	84.7%
Garden Gate Health Care	184	4	13.5 miles/19 mins	94.74%	87.36%	95.28%	92.7%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. Higher numbers reflect greater resources required for the residents.

Case Mix Index	2019		2020		2021	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Absolut Center for Nursing at Aurora Park	1.2274	1.0898	1.1166	1.0855	1.1748	1.2183
Father Baker Manor	1.3213	0.929	1.0406	0.8346	1.2437	0.9399
Fox Run at Orchard Park	0.9997	0.8039	0.8817	0.8092	0.9161	0.7984
Greenfield Health & Rehab Center	1.4273	1.1572	1.2312	1.0519	1.4241	1.2755
Elderwood at Lancaster	1.2525	1.0208	1.1595	1.1247	1.3708	1.2246
Seneca Health Care Center	1.3791	1.1249	1.4343	1.3478	1.3338	1.314
Garden Gate Health Care	1.4562	1.0675	1.4081	1.3166	1.4017	1.2722

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

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

The facility's Medicaid admissions rate was above the threshold of 75% of the Erie County rate for 2019 through 2021.

Medicaid Access	2019	2020	2021
Erie County Total	32.0%	24.2%	16.9%
Erie Threshold Value	24.0%	18.2%	12.7%
Absolute Center for Nursing at Aurora Park	32.6%	23.7%	16.9%

Conclusion

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

Program Analysis

Program Description

This application proposes to establish RCA Servicer at Aurora Park, LLC as the new operator of the 320-bed residential health care facility located at 292 Main Street, East Aurora currently operated as Absolut Center for Nursing and Rehabilitation at Aurora Park.

Facility Information

	Existing	Proposed
Facility Name	Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC	Aurora Center for Rehabilitation and Nursing
Address	292 Main Street East Aurora, NY 14052	Same
RHCF Capacity	320	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC Membership: Israel Sherman 45% Samuel Sherman 1% Absolute Facilities Management, LLC 54% Israel Sherman (100%)	RCA Servicer at Aurora Park, LLC Membership: Menachem Tauber 7.5% Michael Farbenblum 23% Mordechai Mendlowitz 22.5% Orly Lieberman 47%

Character and Competence

Orly Lieberman lists employment concurrently as a Psychotherapist at the Private Practice of Orly Lieberman, which conducts individual and family psychotherapy sessions located in Valley Stream, NY, since November 2020, and as a Pre-Marital Counselor (Kallah Teacher) since January 2006. Orly Lieberman holds a master's degree in Clinical Mental Health Counseling from St. John's University. Orly Lieberman is licensed as a mental health counselor in New York State and discloses the following ownership interests in health facilities:

Nursing Homes

Sunset Nursing and Rehabilitation Center (N.Y.) (9.9%)	02/2019 to present
Roscoe Rehabilitation and Nursing Center (N.Y.) (1%)	08/2018 to present
Autumn View Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Brookhaven Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Garden Gate Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Harris Hill Nursing Facility, LLC (N.Y.) (50%)	03/2017 to present
North Gate Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Seneca Health Care Center, LLC (N.Y.) (50%)	03/2017 to present
Golden Hill Nursing & Rehabilitation Center (N.Y.) (9.54%)	01/2020 to present
Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation of Westfield (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (47%)	Pending
Taconic Rehabilitation and Nursing at Beacon (N.Y.) (60%)	Pending
Taconic Rehabilitation and Nursing at Hopewell (N.Y.) (60%)	Pending
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (60%)	Pending

End Dated Ownership

Bishop Rehab and Nursing Center (N.Y.) (1%) 12/2017 to 09/2022

Menachem Tauber lists current employment at Preventive Diagnostic Inc., which is a Mobile X-ray/Ultrasound company located in Brooklyn, NY, as CEO since 2010. Menachem Tauber holds a high school diploma from Yeshiva Belz Monsey and discloses the following health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Westfield (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (7.5%)	Pending

Diagnostic & Treatment Center

Preventive Diagnostics INC. (portable x-ray) (N.Y.) (100%) 04/2010 to present

Michael Farbenblum lists concurrent employment at The McGuire Group, which is a skilled nursing and rehabilitation business located in Valley Stream, NY, as General Counsel since 2019, and Mr. Farbenblum is also self-employed as a consultant providing legal services and business consulting primarily to skilled nursing facilities and related entities since 2016. Michael Farbenblum holds a Master of Laws degree from New York University School of Law. He is licensed as both a real estate broker as well as an attorney in New York State and is also licensed as an attorney in Connecticut. Mr. Farbenblum discloses the following health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation at Westfield (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (23%)	Pending
Taconic Rehabilitation and Nursing at Beacon (N.Y.) (20%)	Pending
Taconic Rehabilitation and Nursing at Hopewell (N.Y.) (20%)	Pending
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (20%)	Pending

Receivership Nursing Homes

Taconic Rehabilitation and Nursing at Beacon (N.Y.) (50%)	07/2022 to present
Taconic Rehabilitation and Nursing at Hopewell (NY) (50%)	07/2022 to present
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (50%)	07/2022 to present

End Dated Ownership

The Hamptons Center for Rehabilitation & Nursing (N.Y.) (5%) 01/2009 to 2/2016

Mordechai Mendlowitz lists concurrent employment at Rubin & Mendlowitz, an elder law legal group, as a partner located in Cedarhurst, NY, since 2014 and Family Guardian Services, Inc., a not-for-profit agency providing Article 81 guardianship services as Executive Director located in Cedarhurst, NY since 2017. Mordechai Mendlowitz holds a Juris Doctor degree from Fordham University School of Law. Mr. Mendlowitz is licensed as both a real estate broker as well as an attorney in New York State. Mordechai Mendlowitz does not disclose any health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Westfield (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (22.5%)	Pending

Quality Review

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

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership					
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	<u>< 48 Months</u>		<u>48 months or more</u>	
		<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>
Orly Lieberman	9	1	100%	8	12.50%
Menachem Tauber	0	NA	NA	NA	NA
Michael Farbenblum	3	3	100%	NA	NA
Mordechai Mendlowitz	0	NA	NA	NA	NA

DURATION OF OWNERSHIP AS OF 6/29/2023

Data date: 4/2023

New York - The proposed owner's portfolio includes ownership in nine New York facilities, and Michael Farbenblum became the receiver of three New York facilities. Eight of the New York facilities in the ownership portfolio have a CMS overall quality rating of average or higher. The remaining facility Sunset Nursing and Rehabilitation Center, has a CMS overall quality rating of much below average. When asked to explain the low overall CMS ratings for Sunset Nursing and Rehabilitation Center, the applicants indicated the following. The applicants were also asked to explain what was being done to improve the CMS quality rating at the Taconic facilities currently operated under receivership.

Sunset Nursing and Rehabilitation Center's one-star overall CMS quality rating is largely attributable to staffing challenges that have impacted care delivery. Recruiting staff in rural Boonville, New York, is very difficult. Several steps have been taken to address quality and improve operations, including implementing a new Electronic Medical Record-Point Click Care in March 2019, which has improved efficiency and outcomes across all disciplines. The members of the operating entity ("members") have also integrated the facility's policies and procedures with those of their larger organizations to take advantage of best practices. This was a key factor in assisting the facility to maintain operations throughout the pandemic. In September 2021, the members supplied additional recruiter positions at the facility and throughout the organization to focus on interviewing and hiring staff. Additionally, in January 2022, the members strengthened the facility's clinical team by supplying Regional Quality Assurance nurses to provide routine audits of regulatory requirements. On October 3, 2022, the facility hired a new administrator who has over 15 years of experience and a strong history with survey performance.

The following is a list of initiatives that have been implemented to improve CMS quality ratings at Taconic Rehabilitation and Nursing at Beacon, Taconic Rehabilitation and Nursing at Hopewell, and Taconic Rehabilitation and Nursing at Ulster:

- *Recruitment and Retention Initiatives*
 - *New rates of pay for direct care staff (CNAs, LPNs, and R.N.s) have been implemented through the new collective bargaining agreement.*
 - *New recruitment incentive programs have been implemented.*
 - *Certified Nursing Aide Training Program teaching and testing sites located at Beacon and Hopewell.*
 - *Evaluation of Systematic processes and data for successful recruitment. Onboarding and retention of new staff, which will incorporate "Best Practices" for all Taconic facilities.*
- *Management Briefings. Beginning in March 2023, management Briefings will be held with each department head and the Administrator, the Regional V.P.s, CNO, and CEO every 8 weeks to review and discuss each aspect of the building and its operations to identify opportunities for improvement and development of a deeper understanding of each facility's operations and unique issues.*

- **Capital Improvements.** Capital improvements will be reviewed every 8 weeks at the Management Briefings to ensure staff have the supplies and equipment necessary to provide safe and effective care. Recent capital purchases include new air mattresses, therapy equipment, wheelchairs, wheelchair cushions, vital machines, and washers and dryers.
- **Information Technology.** Significant upgrades impacting all aspects of the I.T. system and infrastructure have been made, including new computers, wiring, wireless internet access, and the purchase of iPads to assist CNAs with documentation. The cumulative effect of these upgrades has resulted in improved electronic communications and workflow, allowing for more time at the resident bedside. Further, the I.T. system enhancements will allow the facility teams to proactively monitor Quality Measures and, where indicated, develop and implement QAPI projects to improve quality measures.
 - Electronic medical record systems have been updated to Point Click Care at Beacon, with the anticipated completion of 3/31/23 at Hopewell and an anticipated completion of 6/2023 at Ulster.
 - Utilization of a real-time Medical System (RTMS), which will be operational by the end of March 2023 and will work in collaboration with PCC.
 - Utilization of StarPro which will provide live updates to the Quality Measures as MDSs are closed, identify residents the trigger for each indicator, and allow the facility to identify trends and implement QAPI programs.
- **Education.** A new education platform, SNF Clinic, will be implemented. This platform will be available to all employed staff and assist them in completing annual mandatory trainings, staff competency trainings, general education trainings, and education related to identified trends.
- **Clinical Support and Guidance.** The regional Team consisting of subject matter experts in the areas of rehabilitation services, MDS, social services, and clinical systems will provide support to facilities.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC	Subject Facility	***	**	*****	**
Sunset Nursing and Rehabilitation Center	Current	*	*	***	*
	02/2019	*	*	**	*
Roscoe Rehabilitation and Nursing Center	Current	****	****	*****	*
	08/2018	*****	****	*****	***
Autumn View Health Care Facility, LLC	Current	****	****	*****	*
	03/2017	*****	****	*****	***
Brookhaven Health Care Facility, LLC	Current	*****	****	*****	***
	03/2017	*****	****	*****	*****
Garden Gate Health Care Facility, LLC	Current	****	****	*****	*
	03/2017	*****	****	*****	****
Harris Hill Nursing Facility, LLC	Current	***	****	****	*
	03/2017	*****	****	*****	****
North Gate Health Care Facility, LLC	Current	****	*****	***	*
	03/2017	****	***	****	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Seneca Health Care Center, LLC	Current	*****	****	*****	**
	03/2017	*****	****	*****	****
Golden Hill Nursing & Rehabilitation Center	Current	***	***	****	**
	01/2020	*****	****	*****	**
Taconic Rehabilitation and Nursing at Beacon	Current	**	**	**	***
	07/2022	**	**	**	***
Taconic Rehabilitation and Nursing at Hopewell	Current	**	**	***	****
	07/2022	**	**	**	***
Taconic Rehabilitation and Nursing at Ulster	Current	**	**	***	***
	07/2022	*	*	***	**

Data date: 4/2023

End Dated Ownership					
New York					
Bishop Rehab and Nursing Center	09/2022	SFF	SFF	SFF	SFF
	12/2017	*	*	**	*
The Hamptons Center for Rehabilitation & Nursing	02/2016	***	***	**	**
	01/2009	*	*	**	**

Enforcement History

A review of the operations of Sunset Nursing and Rehabilitation Center for the time period indicated above reveals the following:

- The facility was assessed a federal CMP in the amount of \$6,923.00 and fined \$2,000.00 pursuant to Stipulation and Order NH-21-206 for surveillance findings on 07/21/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of Roscoe Rehabilitation and Nursing Center for the time period indicated above reveals no enforcements.

A review of the operations of Autumn View Health Care Facility, LLC, for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$650.00 on 07/19/2021 for failure to report COVID data.

A review of the operations of Brookhaven Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-006 for surveillance findings on 11/16/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was assessed a federal CMP of \$650.00 on 08/30/2021 and \$975.00 on 09/13/2021 for failure to report COVID data.

A review of the operations of Garden Gate Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-22-053 for surveillance findings on 02/11/2022. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of Harris Hill Nursing Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-070 for surveillance findings on 03/17/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-071 for surveillance findings on 01/08/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of North Gate Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$6,000.00 pursuant to Stipulation and Order NH-22-062 for surveillance findings on 08/21/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was assessed a federal CMP of \$650.00 on 08/02/2021, \$975.00 on 08/09/2021, and \$1,316.00 on 01/17/2022 for failure to report COVID data.

A review of the operations of Seneca Health Care Center, LLC for the time period indicated above reveals the following:

- The facility was fined \$10,000.00 pursuant to Stipulation and Order NH-23-041 for surveillance findings on 01/12/2023. Deficiencies were found under 415.12(h)(2) Quality of Care. The facility failed to ensure that each resident received adequate supervision to prevent accidents.

A review of the operations of Golden Hill Nursing & Rehabilitation Center for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-234 for surveillance findings on 08/31/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was fined \$8,000.00 pursuant to Stipulation and Order NH-20-034 for surveillance findings on 06/22/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- A federal CMP in the amount of \$3,250.00 was also assessed for the surveillance findings on 6/22/2021.
- The facility was assessed a federal CMP of \$655.00 on 01/04/2021 for failure to report COVID data.

A review of Bishop Rehab and Nursing Center for the period specified above reveals the following:

- The facility was assessed a federal CMP of \$75,582.00 and fined \$6,000.00 pursuant to Stipulation and Order# 23-007 issued for surveillance findings on September 7, 2022. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of care Medication Errors. The facility failed to administer prescribed anti-organ rejection medication to a resident for four days and failed to notify the physician of the error. Additionally, the facility failed to administer bi-weekly medication for anemia to the same resident and failed to notify the physician or reschedule the missed dose. The facility also failed to administer monthly intravenous medication to a resident during their stay at the facility and failed to ensure that the medication be administered to the resident following their discharge.
- The facility was assessed a federal CMP of \$9,750.00 and fined \$6,000.00 pursuant to Stipulation and Order# 22-144 issued for surveillance findings on May 4, 2022. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care Adequate Supervision, NYCRR 66-4.1 Vaccinations of Nursing Home Residents and Personnel, and 10 NYCRR 415.19 Infection Control. The facility failed to ensure each resident was offered the COVID-19 vaccine and provide education regarding the benefits and risks, and potential side effects associated with the vaccine. The facility was cited for failure to ensure staff donned a mask before entering the room of a resident who was unvaccinated for influenza and COVID-19. The facility was also cited for failure of a staff member to perform hand hygiene after removing an unclean wound dressing and cleaning a resident's wound.
- On 08/14/2019, the facility was cited for failure to honor the resident's right to request, refuse, and/or discontinue treatment, to participate in or refuse to participate in experimental research, and to formulate an advance directive. Federal Tag 578 at a G level.

- The facility was assessed a federal CMP of \$8,223.00 and fined \$2,000.00 pursuant to Stipulation and Order # 19-052 issued for surveillance findings on August 14, 2019. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii) Request/ Refuse/ Discontinue Treatment, Formulate Advance Directives.
- The facility was assessed a federal CMP of \$8,096.00 on 12/20/2019 for failure to protect each resident from all types of abuse, such as physical, mental, sexual abuse, physical punishment, and neglect by anybody under Federal Tag 600 at a G level.
- On 12/04/2020, the facility was cited for failure to provide appropriate treatment and care according to orders, residents' preferences, and goals under Federal Tag 684 at a G level.
- The facility was assessed a federal CMP of \$19,523.00 during a Covid-19 Infection Control Survey on 12/02/2020 under Federal tag 880 for failure to provide and implement an infection prevention and control program.
- The facility was assessed federal CMP of \$66,319.00 and \$15,000.00 on 09/03/2021 under Federal Tag 836 for failure to ensure the facility is licensed under applicable state and local law and operates and provides services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards.
- On 10/25/2021, the facility was assessed a federal CMP of \$81,319.00 for failure to prepare residents for a safe transfer or discharge from the nursing home under Federal Tag 624 at a G level.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on September 23, 2021. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care Adequate Supervision. The facility failed to supervise a resident at risk of elopement, who attempted to elope through their third-story window, resulting in fatal injuries. The facility was cited for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents. Federal Tag 689 at a J level.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on September 20, 2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control. Facility staff was observed wearing their face mask below their nose.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on October 25, 2021. Deficiencies were found under 10 NYCRR 415.3(i) Transfer and Discharge Rights. The facility discharged a resident without ensuring the resident, PHL surrogate, or a family member understood the discharge and with the medications ordered for a different resident. The resident ingested these medications for seven days and subsequently went into cardiac arrest.
- The facility was fined \$14,000.00 pursuant to Stipulation and Order # 21-200 issued for surveillance findings on January 17, 2020, and September 25, 2020. Deficiencies were found under 10 NYCRR 415.12. On 09/25/2020, the facility did not reassess a resident who fell and complained of severe pain when the resident's clinical condition did not improve; the facility failed to timely implement a stat order for an x-ray. On 01/17/2020, the facility did not timely perform a blood clotting test (PT/INR) as ordered for a resident on blood thinning medications. Also, the facility did not implement an order to treat a resident's skin reaction to a therapeutic treatment.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 21-168 issued for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.12(f)(1)(2). The facility failed to ensure residents received treatment and care in accordance with professional standards of practice.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 21-041 issued for surveillance findings on December 20, 2019, and September 17, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and (2), 400.2, and 415.4(b). The facility failed to maintain an infection control program by failing to enforce PPE requirements and had four events of not wearing a face mask within six feet of a resident. Also, the facility failed to ensure a resident was not free from abuse, and staff immediately reported abuse.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order # 19-052 issued for surveillance findings on August 14, 2019. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii), Right to Privacy. Each resident shall have the right to personal privacy and confidentiality of his or her personal and clinical records, which shall reflect the resident's right to approve or refuse the release of personal and clinical records to any individual outside the facility except when the resident is transferred to another health care institution; or record release is required by law.

A review of the operations of Taconic Rehabilitation and Nursing at Beacon for the time period indicated above reveals no enforcements.

A review of the operations of Taconic Rehabilitation and Nursing at Hopewell for the time period indicated above reveals no enforcements.

A review of the operations of Taconic Rehabilitation and Nursing at Ulster for the time period indicated above reveals no enforcements.

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

Operating Budget

The applicant has provided the Current Year (2021) results, and the First (2024) and Third (2026) year operating budget, in 2023 dollars, after change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2024</u>		<u>2026</u>	
<u>Revenues:</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicare FFS	\$227.84	\$13,008,657	\$230.49	\$17,449,937	\$230.49	\$17,817,338
Medicare MC	\$199.16	\$909,570	\$247.59	\$1,947,791	\$247.59	\$1,988,890
Medicaid FFS	\$587.76	\$3,681,131	\$675.63	\$4,430,782	\$675.63	\$4,524,018
Medicaid MC	\$392.01	\$2,131,756	\$392.01	\$4,267,029	\$392.01	\$4,356,799
Private Pay	\$638.46	\$3,829,472	\$386.74	\$3,844,969	\$386.74	\$3,925,798
Other						
Other Op Revenue		\$1,344,864		\$		\$
Non-Op Expense		\$2,563,784		\$		\$
Total Rev		\$27,469,234		\$31,940,508		\$32,612,843
<u>Expenses:</u>						
Operating	\$291.87	\$23,163,178	\$241.15	\$26,757,450	\$236.90	\$26,840,305
Capital	<u>\$60.82</u>	<u>\$4,826,507</u>	<u>\$45.05</u>	<u>\$4,998,932</u>	<u>\$45.08</u>	<u>\$5,107,407</u>
Total Expenses	\$352.68	\$27,989,685	\$286.20	\$31,756,382	\$281.98	\$31,947,712
Net Income (Loss)		<u>(\$520,451)</u>		<u>\$184,126</u>		<u>\$665,131</u>
Patient Days		79,362		110,960		113,296
Utilization %		67.95%		95.00%		97.00%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2021 payors and 2021 RHCF-4 cost report information. Historical utilization for the base year 2021 was 67.95%.
- The Medicaid Fee for Service reimbursement rate in Years One and Three is based on facilities 2022 Nursing Home Rate.
- The rates for Medicare Managed Care, Medicaid Managed Care, and Private Pay in Years One and Three are based upon the average rate by payor through July 2022.
- Utilization is expected to increase over the current year utilization of 67.95% to 95% and 97%, respectively in Years One and Three because of strengthening relationships with hospital discharge planners, establishment of new referral relationships, and engagement in community outreach programs.
- Projected utilization in Years One and Three is based on facilities most recent census and payer mix.
- The decline in Medicaid Managed Care utilization is due to the carve-out of nursing home benefits from managed long-term care.

Utilization by payor source before and after the change in ownership is as follows:

	<u>Current Year</u>	<u>Years One & Three</u>
	<u>2021</u>	<u>2024 and 2026</u>
Medicare-FFS	7.89%	5.91%
Medicare-MC	6.85%	9.81%
Medicaid-FFS	71.94%	68.23%
Medicaid-MC	5.75%	7.09%
Private Pay	<u>7.56%</u>	<u>8.96%</u>
Total	100.00%	100.00%

- Breakeven utilization is projected at 94.45% or 110,321 patient days for Year One and 95.02% or 110,986 patient days for Year Three.
- The facility's Medicaid admissions of 32.6% in 2019, 23.7% in 2020, and 16.9% in 2021 are above Erie County's 75% threshold rate of 24 % in 2019 and 18.2% in 2020 and 12.7% in 2021.

Asset Purchase Agreement

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

Date:	January 30, 2020
Sellers:	Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC Absolut Center for Nursing and Rehabilitation at Allegany, LLC Absolut Center for Rehabilitation at Gasport, LLC Absolut at Orchard Brooke, LLC Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC Absolut Center for Nursing Rehabilitation at Westfield, LLC and Absolut Facilities Management, LLC
Purchaser:	RCA Healthcare Management, LLC
Acquired Assets:	Business and operation of each facility and all inventory, supplies and articles of personal property, including collective bargaining agreements, leases, all facilities contracts, agreements, leases, undertakings, commitments and other arrangements and all contracts entered into on or after ASA effective date with the consent of the seller by the ASA servicer, trade names, logos, trade and service marks associated with the facilities, programs, and acquired assets, all menus, policies and procedures manuals, computer software, copies of all books and records relating to the facilities, all resident/patient records relating to the facilities, and all employee and payroll records of transferred employees, goodwill, transferrable Medicare and Medicaid provider numbers and agreements, rate increases and/or lump sum or other payments, with respect to third party payments, transferable rights to warranties, tangible or intangible assets owned by sellers used or necessary for, the operation of the facilities other than excluded assets.
Excluded Assets:	All insurance policies and claims, and proceeds, relating to events before the ASA effective date, rights and interests of seller under this agreement and any documents executed in connection with the closing, retroactive rate increases, third party payments, from any source, which become effective before, on or after the closing date for services rendered before the ASA effective date and accounts receivables and proceeds, claims, rights, causes of action, right of recovery, rights of set off and recoupment against any third parties(including any governmental authority and third party payor programs, Medicare, Medicaid, or private insurance plans and employee assistance program) from the operation of the facilities through end of the day preceding the ASA effective date, sellers' personal property, any assets of seller not used in connection with the operation of any facility
Assumed Liabilities:	All liabilities and obligations relating to the facility and/or the acquired assets arising on or after the ASA effective date, including sellers accounts payable and other liabilities, healthcare, Medicare and Medicaid overpayment and assessment liabilities, liabilities under the assumed contracts, all COBRA and WARN obligations, any liabilities arising out of the ownership or operation of the facilities, seller's liabilities relating to any employees of seller, any liability arising from claims of Medical malpractice and other professional liability of seller or any of its employees, agents or independent contractors, all of seller's accounts payable, any obligations to pay U.S. Trustee fees, any liabilities under any contracts that are not assumed contracts, any loan obligations, including related and intercompany loans, payables, or other obligations other than liabilities concerning the loans or financings of buyer other than any capital leases the reimbursement of which are included in the facilities Medicaid rate.

Purchase Price:	The total price for the facilities included in the APA is \$750,000. \$315,789 is allocated to this application.
Payment of Purchase Price:	\$75,000 deposit due upon execution of this agreement, \$75,000 on the second anniversary of the ASA Effective Date, \$250,000 on the third anniversary of the ASA Effective Date, and the final payment of \$350,000 due on the fourth anniversary of the ASA effective date, plus the amount of all cure costs associated with the assumption and assignment of the assumed contracts (other than leases payable upon closing).

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

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of 5/22/2023, the facility had \$659,893 in outstanding Medicaid liabilities.

Assignment Agreement

The applicant submitted an executed A.A. to acquire the membership interests in LLC. The terms are summarized below:

Date:	May 6, 2020
Landlord:	292 Main Street, LLC
Assignors:	Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC
Assignees:	RCA Servicer at Aurora Park, LLC
Assignment:	The lease for the 320-bed RHCF located at 292 Main Street, East Aurora, NY

Lease Agreement

The applicant has provided an executed lease agreement, the terms of which are summarized as follows:

Date:	March 31, 2020
Premises:	320-bed RHCF located at 292 Main Street, East Aurora, NY (Erie County)
Landlord:	292 Main Street, LLC
Tenant:	RCA Servicer at Aurora Park, LLC
Term:	17 Years ending June 7, 2037
Rent:	\$2,606,740 Annually with an annual 2.25% increase
Provisions:	Taxes, insurance, repairs and maintenance, improvements, and alterations.

The lease arrangement is an arm's length agreement. The applicant has submitted two rent reasonableness letters from New York State Licensed Realtors attesting to the reasonableness of the per-square-foot rental.

Administrative Services Agreement

The applicant provided an executed Administrative Services Agreement, summarized below:

Date:	May 27, 2020
Established Operator:	RCA Servicer at Aurora Park, LLC
Servicer	RCA Healthcare Management, LLC
Term:	Initial 12 Month with indefinite 1-year renewals until terminated by either or both parties
Responsibilities of the Servicer:	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, RHC 4 reports and Medicare cost reports. Review rate sheets and assist with filing necessary appeals.
Compensation:	\$1,191,411.24 per year or \$99,284.27 a month

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. RCA Healthcare Management, LLC also provides consulting services to the other RHCs owned and operated by RCA Servicer.

To strengthen the facility's admissions process, the operator will develop a community outreach program to inform surrounding hospitals, home health agencies, assisted living facilities, and adult care facilities of the change in ownership of the facility and that they intend to provide priority to Medicaid recipients seeking admission to residential health care facilities and offer services to difficult to place residents. In addition, RCA Healthcare Management, LLC provides consulting services to the other RHCs owned and operated by RCA Servicer.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the RHC's operations is \$315,789 and will be met with members' equity. BFA Attachment A, proposed members' net worth summaries, reveals sufficient equity overall.

The working capital requirement is \$5,292,730 based on two months of first-year expenses. Working capital will be satisfied with \$2,646,365 in equity from the proposed members and a working capital loan for \$2,646,365 at a 5% interest rate with a five-year term. Metropolitan Commercial Bank provided a Letter of Intent for this working capital loan. BFA Attachment A, the proposed member's net worth summary shows enough assets overall to meet the acquisition and working capital equity requirements. As previously noted, a disproportionate share affidavit was provided by Orly Liberman to cover any member's equity shortfall. BFA Attachment E provides the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$5,614,860.

The submitted budget indicates a net income of \$184,126 and \$665,131 will be generated for the first and third years, respectively. Revenue growth is based on the recovery of occupancy rates to 2019 pre-pandemic levels, strengthened relationships with hospital discharge planners, and improved referrals. The budget appears reasonable.

BFA Attachment F presents the certified and internal financial summary of Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC, for 2020 through 2021 and the period ending 12/31/2022. As shown, the 2020-2021 certified financials indicate the facility had an average positive net asset position of \$1,025,067, an average positive working capital position of \$1,645,588, and an average operating loss of \$2,286,529. The loss was due to the COVID-19 pandemic and its impact on the overall operations of the

facility. For the period ending 12/31/2022, the facility achieved a positive net asset position of \$9,809,839 and a negative working capital position of \$3,695,386, generating a net loss of \$7,651,045. The applicant indicated that the reported loss is attributable to increases in operating expenses, including supplies and labor. In addition, the operator is exploring renegotiating vendor contracts to reduce expenses.

BFA Attachment D presents a financial summary of proposed members' affiliated nursing homes based on audited financial statements for the years-ended December 31, 2020, and 2021 and internal financial statements for the period ended December 31, 2022. Between 2020 and 2021, the affiliated facilities maintained positive net asset and working capital positions as well as positive net income from operations with the exception of Autumn View and Golden Hill, which reported negative working capital, Brookhaven and North Gate, which reported negative working capital and net losses, Harris Hill and Seneca which reported a net loss, Roscoe which reported, negative equity, and Sunset which reported negative working capital, negative net equity, and a net loss. For the period ending December 31, 2022, the affiliated facilities maintained positive net assets and working capital positions except for Sunset, which reported a \$35,705 equity shortfall. During the same period, the affiliated facilities reported positive net income from operations except for Autumn View, Garden Gate, Harris Hill, North Gate, Roscoe, Seneca, and Sunset Nursing, all of which reported net losses. The reported net losses are attributable to lower-than-expected occupancy and higher-than-expected staffing costs. To address these losses, the operators are exploring ways to reduce their reliance on staffing agencies, implementing excess operating cost reduction initiatives, as well as improving census by strengthening relationships with hospital discharge planners and referral sources and engaging in community outreach.

Recommendation

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

Attachments

BHFP Attachment	Map
LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth Summary, members of RCA Servicer at Aurora Park, LLC d/b/a Aurora Center for Rehabilitation and Nursing
BFA Attachment B	Organizational Chart of Original, Proposed and Current Members of the RHCF Operations
BFA Attachment C	Equity Requirement for Operations
BFA Attachment D	Financial Summary of Proposed Member's Affiliated RHCFs
BFA Attachment E	Pro Forma Balance Sheet Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC
BFA Attachment F	2019-2021 Certified and the 12/31/2022 Internal Financial Summary of Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC



**Project # 201265-E
RCA Servicer at Gasport, LLC d/b/a Gasport Center for
Rehabilitation and Nursing**

Program: Residential Health Care Facility
Purpose: Establishment

County: Niagara
Acknowledged: July 17, 2020

Executive Summary

Description

RCA Servicer at Gasport, LLC d/b/a Gasport Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Absolut Center for Nursing and Rehabilitation at Gasport, LLC, an 83-bed, proprietary, Article 28 residential health care facility (RHCF) located at 4540 Lincoln Drive, Gasport (Niagara County). Absolut Center for Nursing and Rehabilitation at Gasport, LLC is the current operator of the facility at 4540 Lincoln Drive, and 4540 Lincoln Drive, LLC is the current real property owner.

On January 30, 2020, Absolut Center for Nursing and Rehabilitation at Gasport, LLC entered into an Asset Purchase Agreement (APA) with RCA Healthcare Management, LLC for the sale and acquisition of the operating interests of Absolut Center at Gasport and four other Absolut RHCFs, as well as an 80-bed Adult Assisted Living Facility-Absolut at Orchard Brooke. The total purchase price of the five RHCF operations is \$750,000, of which \$81,908 is allocated to this facility.

Upon approval of this application, RCA Servicer at Gasport, LLC will lease the premises from 4540 Lincoln Drive, LLC.

The four other nursing homes concurrently being reviewed are:

- CON 201263 – Allegany Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing and Rehabilitation at Allegany, LLC, a 320-bed facility located in Cattaraugus County,
- CON 201264 – Aurora Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC, a 320-bed facility located in Erie County.
- CON 201266 – Three Rivers Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing at Three Rivers, LLC, a 120-bed facility located in Steuben County.
- CON 201267 – Westfield Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing and Rehabilitation at Westfield, LLC, 120-bed facility located in Chautauqua County.

Orly Lieberman, one of the proposed members, is concurrently seeking PHHPC approval to be established as a new operator of Sunset Nursing and Rehabilitation Center (CON 191254), a 120-bed facility RHCF in Oneida County.

Orly Lieberman and Michael Farbenblum are concurrently seeking PHHPC approval to be established as new operators of three RHCFs currently operating under a receivership and are as follows:

- CON 222053 – Taconic Rehabilitation and Nursing at Beacon, a 160-bed facility located in Dutchess County.
- CON 222054 – Taconic Rehabilitation and Nursing at Hopewell, a 160-bed facility located in Dutchess County.
- CON 222055 – Taconic Rehabilitation and Nursing at Ulster, a 120-bed facility located in Ulster County.

BFA Attachment C presents the combined equity analysis for the RCA and Taconic transactions and shows the financial ability of all the parties involved to proceed with these projects. In addition, Orly Lieberman has provided a disproportionate share affidavit to provide additional funding to cover the shortfall of two of the proposed RCA facility members.

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

<u>Current Operator</u>	
<u>Absolut Center for Nursing and Rehabilitation at Gasport, LLC</u>	
<u>Members:</u>	<u>%</u>
Absolut Facilities Management, LLC	54.0%
Israel Sherman	45.0%
Sam Sherman	1.0%
Total	100.0%

<u>Proposed Operator</u>	
<u>RCA Servicer at Gasport, LLC d/b/a Gasport for Rehabilitation and Nursing</u>	
<u>Members:</u>	
Orly Lieberman	47.00%
Michael Farbenblum*	23.00%
Mordechai Mendlowitz	22.50%
Menachem Tauber	7.50%

* *Managing Member of the facility.*

OPCHSM Recommendation Contingent Approval

Need Summary

Occupancy as of April 12, 2023, was 89.2% for the facility and 82.4% for Niagara County. There will not be any changes to beds or services as a result of this application.

Program Summary

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

Financial Summary

There are no project costs associated with this application. RCA Health Management, LLC will acquire the RHCF's operations for \$81,908, funded by members' equity.

<u>Budget:</u>	<u>Current Year (2021)</u>	<u>Year One 2024</u>	<u>Year Three 2026</u>
Revenues:	\$7,811,496	\$7,833,124	\$7,997,943
Expenses:	<u>\$7,763,446</u>	<u>\$7,722,875</u>	<u>\$7,759,120</u>
Gain/(Loss):	\$48,050	\$110,249	\$238,823

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

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

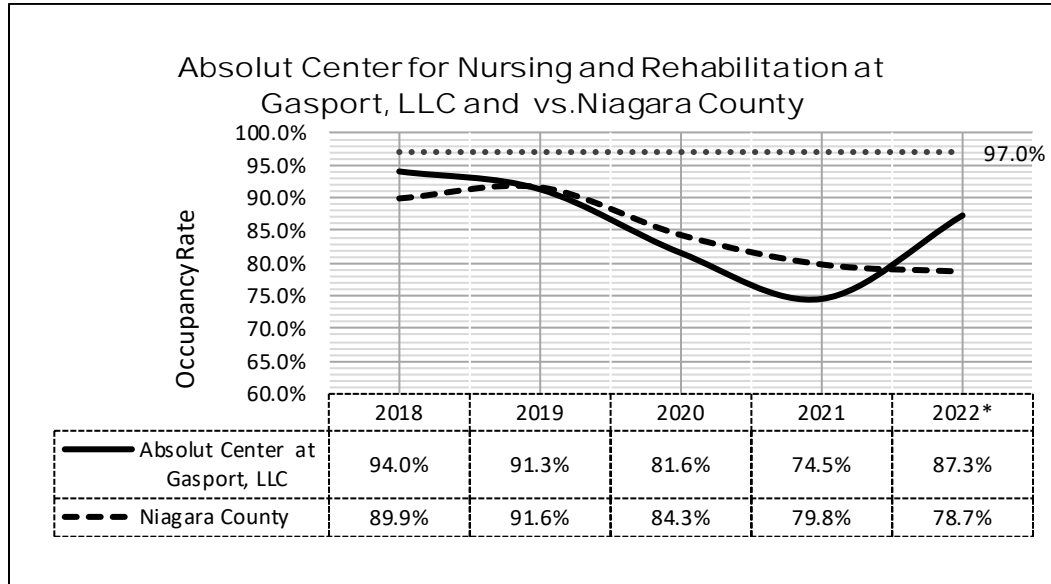
Council Action Date

June 29, 2023

Need Analysis

Background and Analysis

The primary service area is Niagara County. Based on U.S. Census population estimates from 2021, the demographics of the county include 87.2% White, 7.4% Black or African American, 1.2% American Indian and Alaska Native, 1.2% Asian, and 3.7% Hispanic or Latino.



*2022 data is self-reported and not certified

Occupancy, as of April 12, 2023, was 89.2% for the facility and 82.4% for Niagara County.

Utilization ranged from 94% to 74.5% from 2018-2021. However, COVID-19 had a negative impact on nursing home utilization in 2020 and 2021. The facility has since seen a recovery to its current occupancy.

The table below shows the CMS Rating and the utilization of the Article 28 facilities within 22 miles of Absolut Center for Nursing and Rehabilitation at Gasport.

Facility Name	Beds	CMS Overall Rating	Distance from other RHCfs	Occupancy			
				2019	2020	2021	2022
		As of 4/26/23	Miles/Time				
Absolut Center at Gasport	83	4	0 miles/0 min	91.30%	81.56%	74.53%	87.3%
Elderwood at Lockport	126	4	5.5 miles/9 min	87.80%	88.78%	80.61%	76.3%
Lockport Rehab & Health Center	82	3	7 miles/12 min	96.32%	90.52%	86.20%	94.5%
Newfane Rehab & Health Center	165	2	11.7 miles/16 min	95.82%	81.59%	96.96%	99.6%
Medina Memorial Hospital SNF (Orleans)	30	4	10.1 miles/15 min	99.30%	97.00%	93.70%	98.3%
Orchard Rehabilitation & Nursing (Orleans)	160	1	11.1 miles/16 min	89.80%	82.80%	76.30%	82.6%
Canterbury Woods (Erie)	48	4	21.1 miles/31 min	97.40%	93.61%	72.57%	89.0%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. Higher case mix numbers represent greater resources required for the residents.

Case Mix Index	2019		2020		2021	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Absolut Center at Gasport	1.1955	1.0579	1.2193	1.1911	1.3061	1.3223
Elderwood at Lockport	1.3346	1.0076	1.3066	1.1747	1.3065	1.1953
Lockport Rehab & Health Center	1.2606	0.9328	1.0747	1.0415	1.2696	1.2147
Newfane Rehab & Health Center	1.268	1.1454	1.2969	1.2845	N/A	N/A
Medina Memorial Hospital SNF	0.9601	0.9379	0.7597	0.7616	0.9349	0.8914
Orchard Rehabilitation & Nursing	1.2407	1.0004	1.1693	1.1159	1.2671	1.1856
Canterbury Woods	0.9898	0.72	0.8635	0.72	0.9836	0.72

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

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

The facility's Medicaid admissions rate was below the threshold of 75% of the Niagara County rate for 2019. However, it improved in 2020 and 2021.

Medicaid Access	2019	2020	2021
Niagara County Total	26.5%	19.9%	15.0%
Niagara Threshold Value	19.9%	14.9%	11.2%
Absolute Center for Nursing at Gasport	16.4%	26.7%	25.5%

Conclusion

There will be no changes to beds or services as a result of this project. Based upon weekly census data, occupancy, as of April 12, 2023, was 89.2% for the facility and 82.4% for Niagara County.

Program Analysis

Program Description

This application proposes to establish RCA Servicer at Gasport, LLC as the new operator of the 83-bed residential health care facility located at 4540 Lincoln Drive Gasport, NY, currently operated as Absolut Center for Nursing and Rehabilitation at Gasport.

Facility Information

	Existing	Proposed
Facility Name	Absolut Center for Nursing and Rehabilitation at Gasport, LLC	Gasport Center for Rehabilitation and Nursing
Address	4540 Lincoln Drive Gasport, NY 14067	Same
RHCF Capacity	83	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Absolut Center for Nursing and Rehabilitation at Gasport, LLC Membership: Israel Sherman 45% Samuel Sherman 1% Absolute Facilities Management, LLC 54% Israel Sherman (100%)	RCA Servicer at Gasport, LLC Membership: Menachem Tauber 7.5% Michael Farbenblum 23% Mordechai Mendlowitz 22.5% Orly Lieberman 47%

Character and Competence

Orly Lieberman lists employment concurrently as a Psychotherapist at the Private Practice of Orly Lieberman, which conducts individual and family psychotherapy sessions located in Valley Stream, NY, since November 2020, and as a Pre-Marital Counselor (Kallah Teacher) since January 2006. Orly Lieberman holds a master's degree in Clinical Mental Health Counseling from St. John's University. Orly Lieberman is licensed as a mental health counselor in New York State and discloses the following ownership interests in health facilities:

Nursing Homes

Sunset Nursing and Rehabilitation Center (N.Y.) (9.9%)	02/2019 to present
Roscoe Rehabilitation and Nursing Center (N.Y.) (1%)	08/2018 to present
Autumn View Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Brookhaven Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Garden Gate Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Harris Hill Nursing Facility, LLC (N.Y.) (50%)	03/2017 to present
North Gate Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Seneca Health Care Center, LLC (N.Y.) (50%)	03/2017 to present
Golden Hill Nursing & Rehabilitation Center (N.Y.) (9.54%)	01/2020 to present
Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation of Westfield (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (47%)	Pending
Taconic Rehabilitation and Nursing at Beacon (N.Y.) (60%)	Pending
Taconic Rehabilitation and Nursing at Hopewell (N.Y.) (60%)	Pending
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (60%)	Pending

End Dated Ownership

Bishop Rehab and Nursing Center (N.Y.) (1%) 12/2017 to 09/2022

Menachem Tauber lists current employment at Preventive Diagnostic Inc., which is a Mobile X-ray/Ultrasound company located in Brooklyn, NY, as CEO since 2010. Menachem Tauber holds a high school diploma from Yeshiva Belz Monsey and discloses the following health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Westfield (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (7.5%)	Pending

Diagnostic & Treatment Center

Preventive Diagnostics INC. (portable x-ray) (N.Y.) (100%) 04/2010 to present

Michael Farbenblum lists concurrent employment at The McGuire Group, which is a skilled nursing and rehabilitation business located in Valley Stream, NY, as General Counsel since 2019, and Mr. Farbenblum is also self-employed as a consultant providing legal services and business consulting primarily to skilled nursing facilities and related entities since 2016. Michael Farbenblum holds a Master of Laws degree from New York University School of Law. He is licensed as both a real estate broker as well as an attorney in New York State and is also licensed as an attorney in Connecticut. Mr. Farbenblum discloses the following health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation at Westfield (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (23%)	Pending
Taconic Rehabilitation and Nursing at Beacon (N.Y.) (20%)	Pending
Taconic Rehabilitation and Nursing at Hopewell (N.Y.) (20%)	Pending
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (20%)	Pending

Receivership Nursing Homes

Taconic Rehabilitation and Nursing at Beacon (N.Y.) (50%)	07/2022 to present
Taconic Rehabilitation and Nursing at Hopewell (NY) (50%)	07/2022 to present
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (50%)	07/2022 to present

End Dated Ownership

The Hamptons Center for Rehabilitation & Nursing (N.Y.) (5%) 01/2009 to 2/2016

Mordechai Mendlowitz lists concurrent employment at Rubin & Mendlowitz, an elder law legal group, as a partner located in Cedarhurst, NY, since 2014 and Family Guardian Services, Inc., a not-for-profit agency providing Article 81 guardianship services as Executive Director located in Cedarhurst, NY since 2017. Mordechai Mendlowitz holds a Juris Doctor degree from Fordham University School of Law. Mr. Mendlowitz is licensed as both a real estate broker as well as an attorney in New York State. Mordechai Mendlowitz does not disclose any health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Westfield (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (22.5%)	Pending

Quality Review

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

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership					
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	<u>< 48 Months</u>		<u>48 months or more</u>	
		<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>
Orly Lieberman	9	1	100%	8	12.50%
Menachem Tauber	0	NA	NA	NA	NA
Michael Farbenblum	3	3	100%	NA	NA
Mordechai Mendlowitz	0	NA	NA	NA	NA

DURATION OF OWNERSHIP AS OF 6/29/2023

Data date: 4/2023

New York - The proposed owner's portfolio includes ownership in nine New York facilities, and Michael Farbenblum became the receiver of three New York facilities. Eight of the New York facilities in the ownership portfolio have a CMS overall quality rating of average or higher. The remaining facility Sunset Nursing and Rehabilitation Center, has a CMS overall quality rating of much below average. When asked to explain the low overall CMS ratings for Sunset Nursing and Rehabilitation Center, the applicants indicated the following. The applicants were also asked to explain what was being done to improve the CMS quality rating at the Taconic facilities currently operated under receivership.

Sunset Nursing and Rehabilitation Center's one-star overall CMS quality rating is largely attributable to staffing challenges that have impacted care delivery. Recruiting staff in rural Boonville, New York, is very difficult. Several steps have been taken to address quality and improve operations, including implementing a new Electronic Medical Record-Point Click Care in March 2019, which has improved efficiency and outcomes across all disciplines. The members of the operating entity ("members") have also integrated the facility's policies and procedures with those of their larger organizations to take advantage of best practices. This was a key factor in assisting the facility to maintain operations throughout the pandemic. In September 2021, the members supplied additional recruiter positions at the facility and throughout the organization to focus on interviewing and hiring staff. Additionally, in January 2022, the members strengthened the facility's clinical team by supplying Regional Quality Assurance nurses to provide routine audits of regulatory requirements. On October 3, 2022, the facility hired a new administrator who has over 15 years of experience and a strong history with survey performance.

The following is a list of initiatives that have been implemented to improve CMS quality ratings at Taconic Rehabilitation and Nursing at Beacon, Taconic Rehabilitation and Nursing at Hopewell, and Taconic Rehabilitation and Nursing at Ulster:

- *Recruitment and Retention Initiatives*
 - *New rates of pay for direct care staff (CNAs, LPNs, and R.N.s) have been implemented through the new collective bargaining agreement.*
 - *New recruitment incentive programs have been implemented.*
 - *Certified Nursing Aide Training Program teaching and testing sites located at Beacon and Hopewell.*
 - *Evaluation of Systematic processes and data for successful recruitment. Onboarding and retention of new staff, which will incorporate "Best Practices" for all Taconic facilities.*
- *Management Briefings. Beginning in March 2023, management Briefings will be held with each department head and the Administrator, the Regional V.P.s, CNO, and CEO every 8 weeks to review and discuss each aspect of the building and its operations to identify opportunities for improvement and development of a deeper understanding of each facility's operations and unique issues.*

- **Capital Improvements.** Capital improvements will be reviewed every 8 weeks at the Management Briefings to ensure staff have the supplies and equipment necessary to provide safe and effective care. Recent capital purchases include new air mattresses, therapy equipment, wheelchairs, wheelchair cushions, vital machines, and washers and dryers.
- **Information Technology.** Significant upgrades impacting all aspects of the I.T. system and infrastructure have been made, including new computers, wiring, wireless internet access, and the purchase of iPads to assist CNAs with documentation. The cumulative effect of these upgrades has resulted in improved electronic communications and workflow, allowing for more time at the resident bedside. Further, the I.T. system enhancements will allow the facility teams to proactively monitor Quality Measures and, where indicated, develop and implement QAPI projects to improve quality measures.
 - Electronic medical record systems have been updated to Point Click Care at Beacon, with the anticipated completion of 3/31/23 at Hopewell and an anticipated completion of 6/2023 at Ulster.
 - Utilization of a real-time Medical System (RTMS), which will be operational by the end of March 2023 and will work in collaboration with PCC.
 - Utilization of StarPro which will provide live updates to the Quality Measures as MDSs are closed, identify residents the trigger for each indicator, and allow the facility to identify trends and implement QAPI programs.
- **Education.** A new education platform, SNF Clinic, will be implemented. This platform will be available to all employed staff and assist them in completing annual mandatory trainings, staff competency trainings, general education trainings, and education related to identified trends.
- **Clinical Support and Guidance.** The regional Team consisting of subject matter experts in the areas of rehabilitation services, MDS, social services, and clinical systems will provide support to facilities.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Absolut Center for Nursing and Rehabilitation at Gasport, LLC	Subject Facility	***	**	*****	**
Sunset Nursing and Rehabilitation Center	Current	*	*	***	*
	02/2019	*	*	**	*
Roscoe Rehabilitation and Nursing Center	Current	****	****	*****	*
	08/2018	*****	****	*****	***
Autumn View Health Care Facility, LLC	Current	****	****	*****	*
	03/2017	*****	****	*****	***
Brookhaven Health Care Facility, LLC	Current	*****	****	*****	***
	03/2017	*****	****	*****	*****
Garden Gate Health Care Facility, LLC	Current	****	****	*****	*
	03/2017	*****	****	*****	****
Harris Hill Nursing Facility, LLC	Current	***	****	****	*
	03/2017	*****	****	*****	****
North Gate Health Care Facility, LLC	Current	****	*****	***	*
	03/2017	****	***	****	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Seneca Health Care Center, LLC	Current	*****	****	*****	**
	03/2017	*****	****	*****	****
Golden Hill Nursing & Rehabilitation Center	Current	***	***	****	**
	01/2020	*****	****	*****	**
Taconic Rehabilitation and Nursing at Beacon	Current	**	**	**	***
	07/2022	**	**	**	***
Taconic Rehabilitation and Nursing at Hopewell	Current	**	**	***	****
	07/2022	**	**	**	***
Taconic Rehabilitation and Nursing at Ulster	Current	**	**	***	***
	07/2022	*	*	***	**

Data date: 4/2023

End Dated Ownership					
New York					
Bishop Rehab and Nursing Center	09/2022	SFF	SFF	SFF	SFF
	12/2017	*	*	**	*
The Hamptons Center for Rehabilitation & Nursing	02/2016	***	***	**	**
	01/2009	*	*	**	**

Enforcement History

A review of the operations of Sunset Nursing and Rehabilitation Center for the time period indicated above reveals the following:

- The facility was assessed a federal CMP in the amount of \$6,923.00 and fined \$2,000.00 pursuant to Stipulation and Order NH-21-206 for surveillance findings on 07/21/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of Roscoe Rehabilitation and Nursing Center for the time period indicated above reveals no enforcements.

A review of the operations of Autumn View Health Care Facility, LLC, for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$650.00 on 07/19/2021 for failure to report COVID data.

A review of the operations of Brookhaven Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-006 for surveillance findings on 11/16/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was assessed a federal CMP of \$650.00 on 08/30/2021 and \$975.00 on 09/13/2021 for failure to report COVID data.

A review of the operations of Garden Gate Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-22-053 for surveillance findings on 02/11/2022. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of Harris Hill Nursing Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-070 for surveillance findings on 03/17/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-071 for surveillance findings on 01/08/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of North Gate Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$6,000.00 pursuant to Stipulation and Order NH-22-062 for surveillance findings on 08/21/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was assessed a federal CMP of \$650.00 on 08/02/2021, \$975.00 on 08/09/2021, and \$1,316.00 on 01/17/2022 for failure to report COVID data.

A review of the operations of Seneca Health Care Center, LLC for the time period indicated above reveals the following:

- The facility was fined \$10,000.00 pursuant to Stipulation and Order NH-23-041 for surveillance findings on 01/12/2023. Deficiencies were found under 415.12(h)(2) Quality of Care. The facility failed to ensure that each resident received adequate supervision to prevent accidents.

A review of the operations of Golden Hill Nursing & Rehabilitation Center for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-234 for surveillance findings on 08/31/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was fined \$8,000.00 pursuant to Stipulation and Order NH-20-034 for surveillance findings on 06/22/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- A federal CMP in the amount of \$3,250.00 was also assessed for the surveillance findings on 6/22/2021.
- The facility was assessed a federal CMP of \$655.00 on 01/04/2021 for failure to report COVID data.

A review of Bishop Rehab and Nursing Center for the period specified above reveals the following:

- The facility was assessed a federal CMP of \$75,582.00 and fined \$6,000.00 pursuant to Stipulation and Order# 23-007 issued for surveillance findings on September 7, 2022. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of care Medication Errors. The facility failed to administer prescribed anti-organ rejection medication to a resident for four days and failed to notify the physician of the error. Additionally, the facility failed to administer bi-weekly medication for anemia to the same resident and failed to notify the physician or reschedule the missed dose. The facility also failed to administer monthly intravenous medication to a resident during their stay at the facility and failed to ensure that the medication be administered to the resident following their discharge.
- The facility was assessed a federal CMP of \$9,750.00 and fined \$6,000.00 pursuant to Stipulation and Order# 22-144 issued for surveillance findings on May 4, 2022. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care Adequate Supervision, NYCRR 66-4.1 Vaccinations of Nursing Home Residents and Personnel, and 10 NYCRR 415.19 Infection Control. The facility failed to ensure each resident was offered the COVID-19 vaccine and provide education regarding the benefits and risks, and potential side effects associated with the vaccine. The facility was cited for failure to ensure staff donned a mask before entering the room of a resident who was unvaccinated for influenza and COVID-19. The facility was also cited for failure of a staff member to perform hand hygiene after removing an unclean wound dressing and cleaning a resident's wound.
- On 08/14/2019, the facility was cited for failure to honor the resident's right to request, refuse, and/or discontinue treatment, to participate in or refuse to participate in experimental research, and to formulate an advance directive. Federal Tag 578 at a G level.

- The facility was assessed a federal CMP of \$8,223.00 and fined \$2,000.00 pursuant to Stipulation and Order # 19-052 issued for surveillance findings on August 14, 2019. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii) Request/ Refuse/ Discontinue Treatment, Formulate Advance Directives.
- The facility was assessed a federal CMP of \$8,096.00 on 12/20/2019 for failure to protect each resident from all types of abuse, such as physical, mental, sexual abuse, physical punishment, and neglect by anybody under Federal Tag 600 at a G level.
- On 12/04/2020, the facility was cited for failure to provide appropriate treatment and care according to orders, residents' preferences, and goals under Federal Tag 684 at a G level.
- The facility was assessed a federal CMP of \$19,523.00 during a Covid-19 Infection Control Survey on 12/02/2020 under Federal tag 880 for failure to provide and implement an infection prevention and control program.
- The facility was assessed federal CMP of \$66,319.00 and \$15,000.00 on 09/03/2021 under Federal Tag 836 for failure to ensure the facility is licensed under applicable state and local law and operates and provides services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards.
- On 10/25/2021, the facility was assessed a federal CMP of \$81,319.00 for failure to prepare residents for a safe transfer or discharge from the nursing home under Federal Tag 624 at a G level.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on September 23, 2021. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care Adequate Supervision. The facility failed to supervise a resident at risk of elopement, who attempted to elope through their third-story window, resulting in fatal injuries. The facility was cited for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents. Federal Tag 689 at a J level.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on September 20, 2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control. Facility staff was observed wearing their face mask below their nose.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on October 25, 2021. Deficiencies were found under 10 NYCRR 415.3(i) Transfer and Discharge Rights. The facility discharged a resident without ensuring the resident, PHL surrogate, or a family member understood the discharge and with the medications ordered for a different resident. The resident ingested these medications for seven days and subsequently went into cardiac arrest.
- The facility was fined \$14,000.00 pursuant to Stipulation and Order # 21-200 issued for surveillance findings on January 17, 2020, and September 25, 2020. Deficiencies were found under 10 NYCRR 415.12. On 09/25/2020, the facility did not reassess a resident who fell and complained of severe pain when the resident's clinical condition did not improve; the facility failed to timely implement a stat order for an x-ray. On 01/17/2020, the facility did not timely perform a blood clotting test (PT/INR) as ordered for a resident on blood thinning medications. Also, the facility did not implement an order to treat a resident's skin reaction to a therapeutic treatment.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 21-168 issued for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.12(f)(1)(2). The facility failed to ensure residents received treatment and care in accordance with professional standards of practice.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 21-041 issued for surveillance findings on December 20, 2019, and September 17, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and (2), 400.2, and 415.4(b). The facility failed to maintain an infection control program by failing to enforce PPE requirements and had four events of not wearing a face mask within six feet of a resident. Also, the facility failed to ensure a resident was not free from abuse, and staff immediately reported abuse.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order # 19-052 issued for surveillance findings on August 14, 2019. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii), Right to Privacy. Each resident shall have the right to personal privacy and confidentiality of his or her personal and clinical records, which shall reflect the resident's right to approve or refuse the release of personal and clinical records to any individual outside the facility except when the resident is transferred to another health care institution; or record release is required by law.

A review of the operations of Taconic Rehabilitation and Nursing at Beacon for the time period indicated above reveals no enforcements.

A review of the operations of Taconic Rehabilitation and Nursing at Hopewell for the time period indicated above reveals no enforcements.

A review of the operations of Taconic Rehabilitation and Nursing at Ulster for the time period indicated above reveals no enforcements.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the Current Year (2021) results, and the First (2024) and Third (2026) year operating budget, in 2023 dollars, after the change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2024</u>		<u>2026</u>	
<u>Revenues:</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicare FFS	\$805.12	\$1,023,310	\$708.11	\$984,981	\$708.11	\$1,005,516
Medicare MC	\$305.87	\$387,540	\$496.43	\$1,257,457	\$496.43	\$1,283,768
Medicaid FFS	\$221.01	\$3,647,519	\$204.62	\$4,252,004	\$204.62	\$4,341,627
Medicaid MC	\$217.32	\$459,413	\$239.14	\$605,742	\$239.14	\$618,416
Private Pay	\$463.30	\$659,269	\$475.01	\$732,940	\$475.01	\$748,616
Other Op Revenue		\$872,319		\$0		\$0
Non-Op Revenue		<u>\$762,126</u>		<u>\$0</u>		<u>\$0</u>
Total Revenues		\$7,811,496		\$7,833,124		\$7,997,943
<u>Expenses:</u>						
Operating	\$317.64	\$7,171,960	\$246.41	\$7,091,763	\$242.30	\$7,120,172
Capital	<u>\$26.20</u>	<u>\$591,486</u>	<u>\$21.93</u>	<u>\$631,112</u>	<u>\$21.74</u>	<u>\$638,948</u>
Total Expenses	\$343.84	\$7,763,446	\$268.34	\$7,722,875	\$264.01	\$7,759,120
Net Income/Loss		<u>\$48,050</u>		<u>\$110,249</u>		<u>\$238,823</u>
Patient Days		22,579		28,780		29,386
Occupancy		74.53%		95.00%		97.00%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2021 payors and 2021 RHCF-4 cost report information. Historical utilization for the base year 2021 was 74.53%.
- The Medicaid Fee for Service reimbursement rate in Years One and Three is based on the facility's 2022 Nursing Home Rate.
- The rates for Medicare Managed Care, Medicaid Managed Care, and Private Pay in Years One and Three are based upon the average rate by payor through July 2022.
- Utilization is expected to increase over the current year utilization of 74.53% to 95% and 97% in Years One and Three, respectively, because of strengthening relationships with hospital discharge planners, establishment of new referral relationships, and engagement in community outreach programs.
- Projected utilization in Years One and Three is based on facilities most recent census and payer mix.
- The decline in Medicaid Managed Care utilization is due to the carve-out of nursing home benefits from managed long-term care.

Utilization by payor source is as follows:

	<u>Current Year</u>	<u>Year One and Three</u>
	<u>2021</u>	<u>2024 and 2026</u>
Medicare FFS	4.18%	4.83%
Medicare MC	5.70%	8.80%
Medicaid FFS	74.22%	72.20%
Medicaid MC	9.51%	8.80%
Private Pay	<u>6.39%</u>	<u>5.36%</u>
Total	100.00%	100.00%

- Breakeven utilization is projected at 93.60% or 28,356 patient days for Year One and 94.10% or 28,508 patient days for Year Three.
- The facility's Medicaid admissions of 16.4% in 2019 was less than Niagara's County 75% threshold rate total of 19.9%, 26.7% in 2020 exceeded Niagara County's 75% threshold rate of 14.9%, and 25.5% in 2021 exceeded Niagara County's 75% threshold rate of 11.2%.

Asset Purchase Agreement

The applicant submitted an executed APA for the acquisition of the operating interests of the RHCF. The terms of the agreement are summarized below:

Date:	January 30, 2020
Sellers:	Absolut Center for Rehabilitation at Gasport, LLC Absolut Center for Nursing and Rehabilitation at Allegany, LLC Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC Absolut at Orchard Brooke, LLC Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC Absolut Center for Nursing Rehabilitation at Westfield, LLC and Absolut Facilities Management, LLC
Purchaser:	RCA Healthcare Management, LLC
Acquired Assets:	Business and operation of each facility and all inventory, supplies and articles of personal property, including collective bargaining agreements, leases, all facilities contracts, agreements, leases, undertakings, commitments and other arrangements and all contracts entered into on or after ASA effective date with the consent of the seller by the ASA servicer, trade names, logos, trade and service marks associated with the facilities, programs, and acquired assets, all menus, policies and procedures manuals, computer software, copies of all books and records relating to the facilities, all resident/patient records relating to the facilities, and all employee and payroll records of transferred employees, goodwill, transferrable Medicare and Medicaid provider numbers and agreements, rate increases and/or lump sum or other payments, with respect to third party payments, transferable rights to warranties, tangible or intangible assets owned by sellers used or necessary for, the operation of the facilities other than excluded assets.
Excluded Assets:	All insurance policies and claims, and proceeds, relating to events before the ASA effective date, rights and interests of the seller under this agreement and any documents executed in connection with the closing, retroactive rate increases, third-party payments from any source, which become effective before, on or after the closing date for services rendered before the ASA effective date and accounts receivables and proceeds, claims, rights, causes of action, right of recovery, rights of set off and recoupment against any third parties(including any governmental authority and third-party payor programs, Medicare, Medicaid, or private insurance plans and employee assistance program) from the operation of the facilities through end of the day preceding the ASA effective date, sellers' personal property, any assets of the seller not used in connection with the operation of any facility

Assumed Liabilities:	All liabilities and obligations relating to the facility and/or the acquired assets arising on or after the ASA effective date, including sellers accounts payable and other liabilities, healthcare, Medicare and Medicaid overpayment and assessment liabilities, liabilities under the assumed contracts, all COBRA and WARN obligations, any liabilities arising out of the ownership or operation of the facilities, seller's liabilities relating to any employees of seller, any liability arising from claims of Medical malpractice and other professional liability of seller or any of its employees, agents or independent contractors, all of seller's accounts payable, any obligations to pay U.S. Trustee fees, any liabilities under any contracts that are not assumed contracts, any loan obligations, including related and intercompany loans, payables, or other obligations other than liabilities concerning the loans or financings of buyer other than any capital leases the reimbursement of which are included in the facilities Medicaid rate.
Purchase Price:	The total price for the facilities included in the APA is \$750,000. \$81,908 is allocated to this application.
Payment of Purchase Price:	\$75,000 deposit due upon execution of this agreement, \$75,000 on the second anniversary of the ASA Effective Date, \$250,000 on the third anniversary of the ASA Effective Date, and the final payment of \$350,000 due on the fourth anniversary of the ASA effective date, plus the amount of all cure costs associated with the assumption and assignment of the assumed contracts (other than leases payable upon closing).

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

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of 5/22/2023, the facility had outstanding Medicaid Liabilities of \$231,986.89.

Assignment Agreement

The applicant submitted an executed Assignment and Assumption of Lease Agreement. The terms are summarized below:

Date:	May 6, 2020
Landlord:	4540 Lincoln Drive, LLC
Assignors:	Absolut Center for Nursing and Rehabilitation at Gasport, LLC
Assignees:	RCA Servicer at Gasport, LLC
Assignment:	Lease associated with premises at 4540 Lincoln Drive, Gasport, New York
Terms, Payments, and Provisions:	No Change

Lease Agreement

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

Date:	June 7, 2007
Premises:	An 83-bed RHC located at 4540 Lincoln Drive, Gasport, New York
Landlord:	4540 Lincoln Drive, LLC
Tenant:	Absolut Center for Nursing and Rehabilitation at Gasport, LLC
Terms:	10 years
Rental:	\$488,507 fixed rent for year one; \$493,392 for year two through year eight; \$504,493 for year nine through year ten.
Provisions:	Taxes, utilities, insurance, and repairs and maintenance

The lease arrangement is an arm's length agreement. The applicant has submitted two rent reasonableness letters from New York State Licensed Realtors attesting to the reasonableness of the per-square-foot rental.

Administrative Services Agreement

The applicant provided an executed consulting services agreement, summarized below:

Date:	May 27, 2020
Established Operator:	RCA Servicer at Gasport, LLC
Servicer:	RCA Healthcare Management, LLC
Term:	Initial 12 Months with indefinite 1-year renewals until terminated by either or both parties
Responsibilities of the Servicer:	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, developing, and implementing a marketing plan, and operating, supervising, and overseeing all functions related to billing and Preparation of health facility assessments, RHCF 4 reports and Medicare cost reports. Review rate sheets and assist with filing necessary appeals.
Compensation:	\$ 288,391.68 per year or \$24,032.64 a month

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. RCA Healthcare Management, LLC also provides consulting services to the other RHCFs owned and operated by RCA Servicer.

To strengthen the facility's admissions process, the operator will develop a community outreach program to inform surrounding hospitals, home health agencies, assisted living facilities, and adult care facilities of the change in ownership of the facility and that they intend to provide priority to Medicaid recipients seeking admission to residential health care facilities and offer services to difficult to place residents. In addition, RCA Healthcare Management, LLC provides consulting services to the other RHCFs owned and operated by RCA Servicer.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the RHCF's operations is \$81,908 and will be met with members' equity. BFA Attachment A, proposed members' net worth summaries, reveals sufficient equity overall.

The working capital requirement is \$1,287,146 based on two months of the first year's expenses. Working capital will be satisfied with \$643,573 equity from the proposed members, and the remaining \$643,573 will be financed through a loan at an interest rate of 5% for a five-year term. The facility provided a Letter of Interest from Metropolitan Commercial Bank for this financing. BFA Attachment A, the proposed member's net worth summary shows enough assets overall to meet the acquisition and working capital equity requirements. As previously noted, a disproportionate share affidavit was provided by Orly Liberman to cover any member's equity shortfall. BFA Attachment E provides the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$1,056,488.

The submitted budget indicates that a net income of \$110,249 and \$238,823 will be generated for the first and third years, respectively. Revenue growth is based on the recovery of occupancy rates to 2019 pre-pandemic levels, strengthened relationships with hospital discharge planners, and improved referrals. The budget appears reasonable.

BFA Attachment F presents the certified and internal financial summary of Absolut Center for Nursing and Rehabilitation at Gasport, LLC, for 2020 through 2021 and the period ending 12/31/2022. As shown, the 2020-2021 certified financials indicate the facility had an average positive net asset position of \$658,611, an average positive working capital position of \$174,290, and an average operating loss of \$792,262. The loss was due to the COVID-19 pandemic and its impact on the overall operations of the facility. For the period ending 12/31/2022, the facility achieved a positive net asset position of \$2,262,028 and a negative working capital position of \$734,231, generating a net loss of \$1,360,061. The applicant indicated that the reported loss is attributable to increases in operating expenses, including supplies and labor. In addition, the operator is exploring renegotiating vendor contracts to reduce expenses.

BFA Attachment D presents a financial summary of proposed members' affiliated nursing homes based on audited financial statements for the years-ended December 31, 2020, and 2021 and internal financial statements for the period ended December 31, 2022. Between 2020 and 2021, the affiliated facilities maintained positive net asset and working capital positions as well as positive net income from operations with the exception of Autumn View and Golden Hill, which reported negative working capital, Brookhaven and North Gate, which reported negative working capital, and net losses, Harris Hill and Seneca which reported a net loss, Roscoe which reported, negative equity, and Sunset which reported negative working capital, negative net equity, and a net loss. For the period ending December 31, 2022, the affiliated facilities maintained positive net assets and working capital positions except for Sunset, which reported a \$35,705 equity shortfall. During the same period, the affiliated facilities reported positive net income from operations, with the exception of Autumn View, Garden Gate, Harris Hill, North Gate, Roscoe, Seneca, and Sunset Nursing, all of which reported net losses. The reported net losses are attributable to lower-than-expected occupancy and higher-than-expected staffing costs. To address these losses, the operators are exploring ways to reduce their reliance on staffing agencies, implementing excess operating cost reduction initiatives, as well as improving census by strengthening relationships with hospital discharge planners and referral sources and engaging in community outreach.

Conclusion

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

Attachments

BHFP Attachment	Map
LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth Summary, members of RCA Servicer at Gasport, LLC d/b/a Gasport Center for Rehabilitation and Nursing
BFA Attachment B	Organizational Chart of Original, Proposed and Current Members of the RHCF Operations
BFA Attachment C	Equity Requirement for Operations
BFA Attachment D	Financial Summary of Proposed Member's Affiliated RHCFS
BFA Attachment E	Pro Forma Balance Sheet Absolut Center for Nursing and Rehabilitation at Gasport, LLC
BFA Attachment F	2020-2021 Certified and Internal Financial Summary as of 12/31/2022 for Absolut Center for Nursing and Rehabilitation at Gasport, LLC



Project # 201266-E
**RCA Servicer at Three Rivers, LLC d/b/a Three Rivers
Center for Rehabilitation and Nursing**

Program: Residential Health Care Facility
Purpose: Establishment

County: Steuben
Acknowledged: July 17, 2020

Executive Summary

Description

RCA Servicer at Three Rivers, LLC d/b/a Three Rivers Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC, a 120-bed, proprietary, Article 28 residential health care facility (RHCF) located at 101 Creekside Drive, Painted Post (Steuben County). Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC is the current operator of the facility at 101 Creekside Drive, and 101 Creekside Drive, LLC is the current real property owner.

On January 30, 2020, Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC entered into an Asset Purchase Agreement (APA) with RCA Healthcare Management, LLC for the sale and acquisition of the operating interests of Absolut Center at Three Rivers and four other Absolut RHCFs, as well as an Adult Assisted Living Facility-Absolut at Orchard Brooke. The total purchase price of the five RHCF operations is \$750,000, of which \$118,421 is allocated to this facility.

Upon approval of this application, RCA Servicer at Three Rivers, LLC will lease the premises from 101 Creekside Drive, LLC.

The four other nursing homes concurrently being reviewed are:

- CON 201263 – Allegany Center for Rehabilitation and Nursing, p/k/a Absolut Center for Nursing and Rehabilitation at Allegany, LLC, a 320-bed facility located in Cattaraugus County.
- CON 201264 – Aurora Center for Rehabilitation and Nursing, p/k/a Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC, a 320-bed facility located in Erie County.
- CON 201265 – Gasport Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing and Rehabilitation at Gasport, LLC, an 83-bed facility located in Niagara County.
- CON 201267 – Westfield Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing and Rehabilitation at Westfield, LLC, 120-bed facility located in Chautauqua County.

Orly Lieberman, one of the proposed members, is concurrently seeking PHHPC approval to be established as a new operator of Sunset Nursing and Rehabilitation Center (CON 191254), a 120-bed facility RHCF in Oneida County.

Orly Lieberman and Michael Farbenblum are concurrently seeking PHHPC approval to be established as new operators of the following three RHCFs currently operating under a receivership:

- CON 222053 – Taconic Rehabilitation and Nursing at Beacon, a 160-bed facility located in Dutchess County.
- CON 222054 – Taconic Rehabilitation and Nursing at Hopewell, a 160-bed facility located in Dutchess County.
- CON 222055 – Taconic Rehabilitation and Nursing at Ulster, a 120-bed facility located in Ulster County.

BFA Attachment C presents the combined equity analysis for the RCA and the Taconic transactions and shows the financial ability of all the parties involved to proceed with these projects. In addition, Orly Lieberman has provided a disproportionate share affidavit to provide additional funding to cover the shortfall of two of the proposed RCA facility members.

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

<u>Current Operator</u>	
<u>Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC</u>	
<u>Members:</u>	<u>%</u>
Absolut Facilities Management, LLC	54.0%
Israel Sherman	45.0%
Sam Sherman	1.0%
Total	100.0%

<u>Proposed Operator</u>	
<u>RCA Servicer at Three Rivers, LLC d/b/a Three Rivers for Rehabilitation and Nursing</u>	
<u>Members:</u>	
Orly Lieberman	47.00%
Michael Farbenblum*	23.00%
Mordechai Mendlowitz	22.50%
Menachem Tauber	7.50%

* *Managing Member of the facility.*

OPCHSM Recommendation Contingent Approval

Need Summary

Occupancy, as of April 12, 2023, was 87.5% for the facility and 84.5% for Steuben County. There will be no change to beds or services as a result of this application.

Program Summary

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

Financial Summary

There are no project costs associated with this application. RCA Servicer at Three Rivers, LLC, d/b/a Three Rivers Center for Rehabilitation and Nursing, will acquire the RHCF's operations for \$36,513, funded by members' equity.

<u>Budget:</u>	<u>Current</u> <u>Year</u> <u>(2021)</u>	<u>Year One</u> <u>2024</u>	<u>Year Three</u> <u>2026</u>
Revenues:	\$13,142,899	\$12,920,096	\$12,920,096
Expenses:	<u>\$11,900,980</u>	<u>\$12,624,637</u>	<u>\$12,651,344</u>
Gain/(Loss):	\$1,241,919	\$295,459	\$268,752

Recommendations

Long Term Care Ombudsman Program
The LTCOP recommends Approval (See LTCOP Attachment A)

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

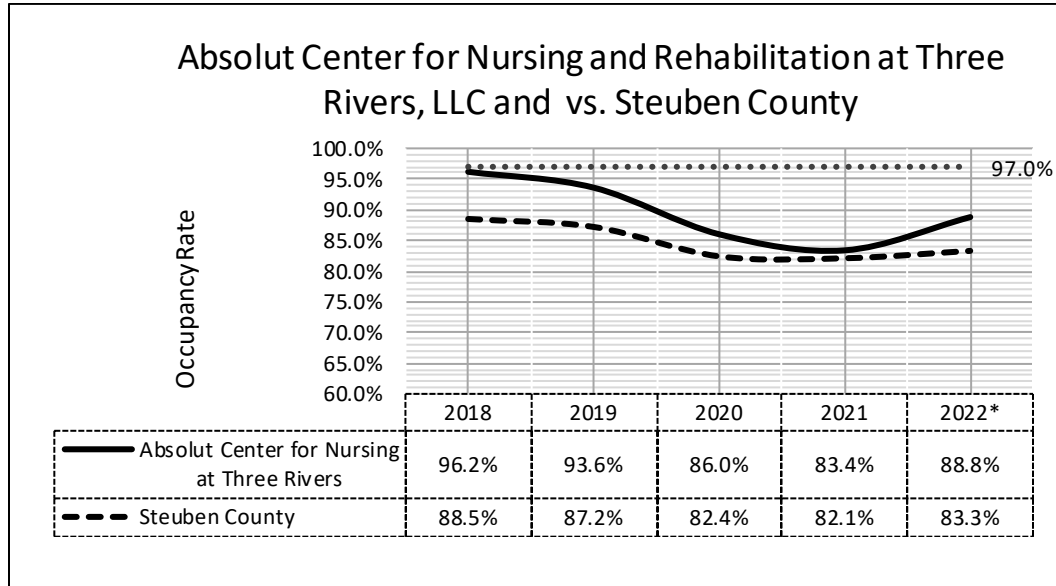
1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility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

Council Action Date
June 29, 2023

Need Analysis

Background and Analysis

The primary service area is Steuben County. Based on U.S. Census population estimates from 2021, the demographics of the county include 94.6% White, 1.7% Black or African American, 1.6% Asian, and 1.8% Hispanic or Latino.



* 2022 data is self-reported and not certified

Occupancy, as of April 12, 2023, was 87.5% for the facility and 84.5% for Steuben County.

Utilization ranged between 96% in 2018 to 83% in 2020 when COVID-19 impacted nursing home occupancy.

The table below shows the CMS Rating and the utilization of the Article 28 facilities within 25 miles of Absolut Center for Nursing and Rehabilitation at Three Rivers.

Facility Name	Beds	CMS Overall Rating	Distance from other RHCs Miles/Time	Occupancy			
				2019	2020	2021	2022
		As of 4/26/23					
Absolut Center at Three Rivers	120	4	0 miles/0 min	93.60%	86.00%	83.39%	88.8%
Corning Center for Rehab	120	2	5.3 miles/10 min	91.80%	90.20%	96.80%	97.2%
Elcor Nursing and Rehab (Chemung)	305	3	17.9 miles/21 min	95.90%	93.50%	79.70%	76.9%
Bethany Nursing and Rehab (Chemung)	122	3	20.0 miles/22 min	93.90%	83.10%	69.90%	67.6%
Steuben Center for Rehab	105	3	21.7 miles/24 min	95.70%	95.90%	96.94%	96.3%
St. Joseph's Hospital SNF (Chemung)	85	2	24.5 miles/24 min	95.20%	92.20%	83.20%	97.2%
Chemung County Nursing (Chemung)	200	4	24.6 miles/24 min	91.40%	79.70%	66.30%	58.1%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. Higher case mix numbers represent greater resources required for the residents.

Case Mix Index	2019		2020		2021	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Absolut Center at Three Rivers	1.3452	1.0491	1.2161	1.1495	1.1877	1.3625
Corning Center for Rehab	1.4247	1.2194	1.2525	1.1959	1.2841	1.2423
Elcor Nursing and Rehab	1.2167	1.0341	1.1526	1.0901	1.1054	1.0398
Bethany Nursing and Rehab	1.332	1.0688	1.2235	1.173	1.1158	1.13
Steuben Center for Rehab	1.4629	1.2004	1.3896	1.3726	1.3491	1.2022
St. Joseph's Hospital SNF	1.2218	0.9339	1.1095	0.9191	N/A	N/A
Chemung County Nursing	1.1464	0.9449	1.0465	0.9692	1.112	1.025

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential health care facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

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

An applicant will be required to make appropriate adjustments in its admission policies and practices to meet the resultant percentage.

The facility's Medicaid admissions rate was above the threshold of 75% of the Steuben County rate for 2019 and 2020. However, it fell below the threshold in 2021.

Medicaid Access	2019	2020	2021
Steuben County Total	24.5%	16.3%	16.5%
Steuben Threshold Value	18.4%	12.2%	12.3%
Absolute Nursing at Three Rivers, LLC	47.4%	14.4%	7.5%

Conclusion

There will not be any changes to beds or services resultant of this change in ownership.

Program Analysis

Program Description

This application proposes to establish RCA Servicer at Three Rivers, LLC as the new operator of the 120-bed residential health care facility located at 101 Creekside Drive, Painted Post, currently operated as Absolut Center for Nursing and Rehabilitation at Three Rivers.

Facility Information

	Existing	Proposed
Facility Name	Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC	Three Rivers Center for Rehabilitation and Nursing
Address	101 Creekside Drive Painted Post, NY 14870	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC Membership: Israel Sherman 45% Samuel Sherman 1% Absolute Facilities Management, LLC 54% Israel Sherman (100%)	RCA Servicer at Three Rivers, LLC Membership: Menachem Tauber 7.5% Michael Farbenblum 23% Mordechai Mendlowitz 22.5% Orly Lieberman 47%

Character and Competence

Orly Lieberman lists employment concurrently as a Psychotherapist at the Private Practice of Orly Lieberman, which conducts individual and family psychotherapy sessions located in Valley Stream, NY, since November 2020, and as a Pre-Marital Counselor (Kallah Teacher) since January 2006. Orly Lieberman holds a master's degree in Clinical Mental Health Counseling from St. John's University. Orly Lieberman is licensed as a mental health counselor in New York State and discloses the following ownership interests in health facilities:

Nursing Homes

Sunset Nursing and Rehabilitation Center (N.Y.) (9.9%)	02/2019 to present
Roscoe Rehabilitation and Nursing Center (N.Y.) (1%)	08/2018 to present
Autumn View Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Brookhaven Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Garden Gate Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Harris Hill Nursing Facility, LLC (N.Y.) (50%)	03/2017 to present
North Gate Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Seneca Health Care Center, LLC (N.Y.) (50%)	03/2017 to present
Golden Hill Nursing & Rehabilitation Center (N.Y.) (9.54%)	01/2020 to present
Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation of Westfield (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation of Aurora Park (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (47%)	Pending
Taconic Rehabilitation and Nursing at Beacon (N.Y.) (60%)	Pending
Taconic Rehabilitation and Nursing at Hopewell (N.Y.) (60%)	Pending
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (60%)	Pending

End Dated Ownership

Bishop Rehab and Nursing Center (N.Y.) (1%) 12/2017 to 09/2022

Menachem Tauber lists current employment at Preventive Diagnostic Inc., which is a Mobile X-ray/Ultrasound company located in Brooklyn, NY, as CEO since 2010. Menachem Tauber holds a high school diploma from Yeshiva Belz Monsey and discloses the following health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Westfield (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (7.5%)	Pending

Diagnostic & Treatment Center

Preventive Diagnostics INC. (portable x-ray) (N.Y.) (100%) 04/2010 to present

Michael Farbenblum lists concurrent employment at The McGuire Group, which is a skilled nursing and rehabilitation business located in Valley Stream, NY, as General Counsel since 2019, and Mr. Farbenblum is also self-employed as a consultant providing legal services and business consulting primarily to skilled nursing facilities and related entities since 2016. Michael Farbenblum holds a Master of Laws degree from New York University School of Law. He is licensed as both a real estate broker as well as an attorney in New York State and is also licensed as an attorney in Connecticut. Mr. Farbenblum discloses the following health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation at Westfield (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation of Aurora Park (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (23%)	Pending
Taconic Rehabilitation and Nursing at Beacon (N.Y.) (20%)	Pending
Taconic Rehabilitation and Nursing at Hopewell (N.Y.) (20%)	Pending
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (20%)	Pending

Receivership Nursing Homes

Taconic Rehabilitation and Nursing at Beacon (N.Y.) (50%)	07/2022 to present
Taconic Rehabilitation and Nursing at Hopewell (NY) (50%)	07/2022 to present
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (50%)	07/2022 to present

End Dated Ownership

The Hamptons Center for Rehabilitation & Nursing (N.Y.) (5%) 01/2009 to 2/2016

Mordechai Mendlowitz lists concurrent employment at Rubin & Mendlowitz, an elder law legal group, as a partner located in Cedarhurst, NY, since 2014 and Family Guardian Services, Inc., a not-for-profit agency providing Article 81 guardianship services as Executive Director located in Cedarhurst, NY since 2017. Mordechai Mendlowitz holds a Juris Doctor degree from Fordham University School of Law. Mr. Mendlowitz is licensed as both a real estate broker as well as an attorney in New York State. Mordechai Mendlowitz does not disclose any health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Westfield (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (22.5%)	Pending

Quality Review

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

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership					
< 48 Months					
48 months or more					
Proposed Owner	Total Nursing Homes	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating	Number of Nursing Homes	Percent of Nursing Homes With a Below Average Rating
Orly Lieberman	9	1	100%	8	12.50%
Menachem Tauber	0	NA	NA	NA	NA
Michael Farbenblum	3	3	100%	NA	NA
Mordechai Mendlowitz	0	NA	NA	NA	NA

DURATION OF OWNERSHIP AS OF 6/29/2023

Data date: 4/2023

New York - The proposed owner's portfolio includes ownership in nine New York facilities, and Michael Farbenblum became the receiver of three New York facilities. Eight of the New York facilities in the ownership portfolio have a CMS overall quality rating of average or higher. The remaining facility Sunset Nursing and Rehabilitation Center, has a CMS overall quality rating of much below average. When asked to explain the low overall CMS ratings for Sunset Nursing and Rehabilitation Center, the applicants indicated the following. The applicants were also asked to explain what was being done to improve the CMS quality rating at the Taconic facilities currently operated under receivership.

Sunset Nursing and Rehabilitation Center's one-star overall CMS quality rating is largely attributable to staffing challenges that have impacted care delivery. Recruiting staff in rural Boonville, New York, is very difficult. Several steps have been taken to address quality and improve operations, including implementing a new Electronic Medical Record-Point Click Care in March 2019, which has improved efficiency and outcomes across all disciplines. The members of the operating entity ("members") have also integrated the facility's policies and procedures with those of their larger organizations to take advantage of best practices. This was a key factor in assisting the facility to maintain operations throughout the pandemic. In September 2021, the members supplied additional recruiter positions at the facility and throughout the organization to focus on interviewing and hiring staff. Additionally, in January 2022, the members strengthened the facility's clinical team by supplying Regional Quality Assurance nurses to provide routine audits of regulatory requirements. On October 3, 2022, the facility hired a new administrator who has over 15 years of experience and a strong history with survey performance.

The following is a list of initiatives that have been implemented to improve CMS quality ratings at Taconic Rehabilitation and Nursing at Beacon, Taconic Rehabilitation and Nursing at Hopewell, and Taconic Rehabilitation and Nursing at Ulster:

- *Recruitment and Retention Initiatives*
 - *New rates of pay for direct care staff (CNAs, LPNs, and R.N.s) have been implemented through the new collective bargaining agreement.*
 - *New recruitment incentive programs have been implemented.*
 - *Certified Nursing Aide Training Program teaching and testing sites located at Beacon and Hopewell.*
 - *Evaluation of Systematic processes and data for successful recruitment. Onboarding and retention of new staff, which will incorporate "Best Practices" for all Taconic facilities.*
- *Management Briefings. Beginning in March 2023, management Briefings will be held with each department head and the Administrator, the Regional V.P.s, CNO, and CEO every 8 weeks to review and discuss each aspect of the building and its operations to identify opportunities for improvement and development of a deeper understanding of each facility's operations and unique issues.*

- **Capital Improvements.** Capital improvements will be reviewed every 8 weeks at the Management Briefings to ensure staff have the supplies and equipment necessary to provide safe and effective care. Recent capital purchases include new air mattresses, therapy equipment, wheelchairs, wheelchair cushions, vital machines, and washers and dryers.
- **Information Technology.** Significant upgrades impacting all aspects of the I.T. system and infrastructure have been made, including new computers, wiring, wireless internet access, and the purchase of iPads to assist CNAs with documentation. The cumulative effect of these upgrades has resulted in improved electronic communications and workflow, allowing for more time at the resident bedside. Further, the I.T. system enhancements will allow the facility teams to proactively monitor Quality Measures and, where indicated, develop and implement QAPI projects to improve quality measures.
 - Electronic medical record systems have been updated to Point Click Care at Beacon, with the anticipated completion of 3/31/23 at Hopewell and an anticipated completion of 6/2023 at Ulster.
 - Utilization of a real-time Medical System (RTMS), which will be operational by the end of March 2023 and will work in collaboration with PCC.
 - Utilization of StarPro which will provide live updates to the Quality Measures as MDSs are closed, identify residents the trigger for each indicator, and allow the facility to identify trends and implement QAPI programs.
- **Education.** A new education platform, SNF Clinic, will be implemented. This platform will be available to all employed staff and assist them in completing annual mandatory trainings, staff competency trainings, general education trainings, and education related to identified trends.
- **Clinical Support and Guidance.** The regional Team consisting of subject matter experts in the areas of rehabilitation services, MDS, social services, and clinical systems will provide support to facilities.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC	Subject Facility	***	**	*****	**
Sunset Nursing and Rehabilitation Center	Current	*	*	***	*
	02/2019	*	*	**	*
Roscoe Rehabilitation and Nursing Center	Current	****	****	*****	*
	08/2018	*****	****	*****	***
Autumn View Health Care Facility, LLC	Current	****	****	*****	*
	03/2017	*****	****	*****	***
Brookhaven Health Care Facility, LLC	Current	*****	****	*****	***
	03/2017	*****	****	*****	*****
Garden Gate Health Care Facility, LLC	Current	****	****	*****	*
	03/2017	*****	****	*****	****
Harris Hill Nursing Facility, LLC	Current	***	****	****	*
	03/2017	*****	****	*****	****
North Gate Health Care Facility, LLC	Current	****	*****	***	*
	03/2017	****	***	****	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Seneca Health Care Center, LLC	Current	*****	****	*****	**
	03/2017	*****	****	*****	****
Golden Hill Nursing & Rehabilitation Center	Current	***	***	****	**
	01/2020	*****	****	*****	**
Taconic Rehabilitation and Nursing at Beacon	Current	**	**	**	***
	07/2022	**	**	**	***
Taconic Rehabilitation and Nursing at Hopewell	Current	**	**	***	****
	07/2022	**	**	**	***
Taconic Rehabilitation and Nursing at Ulster	Current	**	**	***	***
	07/2022	*	*	***	**

Data date: 4/2023

End Dated Ownership					
New York					
Bishop Rehab and Nursing Center	09/2022	SFF	SFF	SFF	SFF
	12/2017	*	*	**	*
The Hamptons Center for Rehabilitation & Nursing	02/2016	***	***	**	**
	01/2009	*	*	**	**

Enforcement History

A review of the operations of Sunset Nursing and Rehabilitation Center for the time period indicated above reveals the following:

- The facility was assessed a federal CMP in the amount of \$6,923.00 and fined \$2,000.00 pursuant to Stipulation and Order NH-21-206 for surveillance findings on 07/21/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of Roscoe Rehabilitation and Nursing Center for the time period indicated above reveals no enforcements.

A review of the operations of Autumn View Health Care Facility, LLC, for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$650.00 on 07/19/2021 for failure to report COVID data.

A review of the operations of Brookhaven Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-006 for surveillance findings on 11/16/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was assessed a federal CMP of \$650.00 on 08/30/2021 and \$975.00 on 09/13/2021 for failure to report COVID data.

A review of the operations of Garden Gate Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-22-053 for surveillance findings on 02/11/2022. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of Harris Hill Nursing Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-070 for surveillance findings on 03/17/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-071 for surveillance findings on 01/08/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of North Gate Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$6,000.00 pursuant to Stipulation and Order NH-22-062 for surveillance findings on 08/21/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was assessed a federal CMP of \$650.00 on 08/02/2021, \$975.00 on 08/09/2021, and \$1,316.00 on 01/17/2022 for failure to report COVID data.

A review of the operations of Seneca Health Care Center, LLC for the time period indicated above reveals the following:

- The facility was fined \$10,000.00 pursuant to Stipulation and Order NH-23-041 for surveillance findings on 01/12/2023. Deficiencies were found under 415.12(h)(2) Quality of Care. The facility failed to ensure that each resident received adequate supervision to prevent accidents.

A review of the operations of Golden Hill Nursing & Rehabilitation Center for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-234 for surveillance findings on 08/31/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was fined \$8,000.00 pursuant to Stipulation and Order NH-20-034 for surveillance findings on 06/22/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- A federal CMP in the amount of \$3,250.00 was also assessed for the surveillance findings on 6/22/2021.
- The facility was assessed a federal CMP of \$655.00 on 01/04/2021 for failure to report COVID data.

A review of Bishop Rehab and Nursing Center for the period specified above reveals the following:

- The facility was assessed a federal CMP of \$75,582.00 and fined \$6,000.00 pursuant to Stipulation and Order# 23-007 issued for surveillance findings on September 7, 2022. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of care Medication Errors. The facility failed to administer prescribed anti-organ rejection medication to a resident for four days and failed to notify the physician of the error. Additionally, the facility failed to administer bi-weekly medication for anemia to the same resident and failed to notify the physician or reschedule the missed dose. The facility also failed to administer monthly intravenous medication to a resident during their stay at the facility and failed to ensure that the medication be administered to the resident following their discharge.
- The facility was assessed a federal CMP of \$9,750.00 and fined \$6,000.00 pursuant to Stipulation and Order# 22-144 issued for surveillance findings on May 4, 2022. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care Adequate Supervision, NYCRR 66-4.1 Vaccinations of Nursing Home Residents and Personnel, and 10 NYCRR 415.19 Infection Control. The facility failed to ensure each resident was offered the COVID-19 vaccine and provide education regarding the benefits and risks, and potential side effects associated with the vaccine. The facility was cited for failure to ensure staff donned a mask before entering the room of a resident who was unvaccinated for influenza and COVID-19. The facility was also cited for failure of a staff member to perform hand hygiene after removing an unclean wound dressing and cleaning a resident's wound.
- On 08/14/2019, the facility was cited for failure to honor the resident's right to request, refuse, and/or discontinue treatment, to participate in or refuse to participate in experimental research, and to formulate an advance directive. Federal Tag 578 at a G level.

- The facility was assessed a federal CMP of \$8,223.00 and fined \$2,000.00 pursuant to Stipulation and Order # 19-052 issued for surveillance findings on August 14, 2019. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii) Request/ Refuse/ Discontinue Treatment, Formulate Advance Directives.
- The facility was assessed a federal CMP of \$8,096.00 on 12/20/2019 for failure to protect each resident from all types of abuse, such as physical, mental, sexual abuse, physical punishment, and neglect by anybody under Federal Tag 600 at a G level.
- On 12/04/2020, the facility was cited for failure to provide appropriate treatment and care according to orders, residents' preferences, and goals under Federal Tag 684 at a G level.
- The facility was assessed a federal CMP of \$19,523.00 during a Covid-19 Infection Control Survey on 12/02/2020 under Federal tag 880 for failure to provide and implement an infection prevention and control program.
- The facility was assessed federal CMP of \$66,319.00 and \$15,000.00 on 09/03/2021 under Federal Tag 836 for failure to ensure the facility is licensed under applicable state and local law and operates and provides services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards.
- On 10/25/2021, the facility was assessed a federal CMP of \$81,319.00 for failure to prepare residents for a safe transfer or discharge from the nursing home under Federal Tag 624 at a G level.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on September 23, 2021. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care Adequate Supervision. The facility failed to supervise a resident at risk of elopement, who attempted to elope through their third-story window, resulting in fatal injuries. The facility was cited for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents. Federal Tag 689 at a J level.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on September 20, 2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control. Facility staff was observed wearing their face mask below their nose.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on October 25, 2021. Deficiencies were found under 10 NYCRR 415.3(i) Transfer and Discharge Rights. The facility discharged a resident without ensuring the resident, PHL surrogate, or a family member understood the discharge and with the medications ordered for a different resident. The resident ingested these medications for seven days and subsequently went into cardiac arrest.
- The facility was fined \$14,000.00 pursuant to Stipulation and Order # 21-200 issued for surveillance findings on January 17, 2020, and September 25, 2020. Deficiencies were found under 10 NYCRR 415.12. On 09/25/2020, the facility did not reassess a resident who fell and complained of severe pain when the resident's clinical condition did not improve; the facility failed to timely implement a stat order for an x-ray. On 01/17/2020, the facility did not timely perform a blood clotting test (PT/INR) as ordered for a resident on blood thinning medications. Also, the facility did not implement an order to treat a resident's skin reaction to a therapeutic treatment.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 21-168 issued for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.12(f)(1)(2). The facility failed to ensure residents received treatment and care in accordance with professional standards of practice.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 21-041 issued for surveillance findings on December 20, 2019, and September 17, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and (2), 400.2, and 415.4(b). The facility failed to maintain an infection control program by failing to enforce PPE requirements and had four events of not wearing a face mask within six feet of a resident. Also, the facility failed to ensure a resident was not free from abuse, and staff immediately reported abuse.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order # 19-052 issued for surveillance findings on August 14, 2019. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii), Right to Privacy. Each resident shall have the right to personal privacy and confidentiality of his or her personal and clinical records, which shall reflect the resident's right to approve or refuse the release of personal and clinical records to any individual outside the facility except when the resident is transferred to another health care institution; or record release is required by law.

A review of the operations of Taconic Rehabilitation and Nursing at Beacon for the time period indicated above reveals no enforcements.

A review of the operations of Taconic Rehabilitation and Nursing at Hopewell for the time period indicated above reveals no enforcements.

A review of the operations of Taconic Rehabilitation and Nursing at Ulster for the time period indicated above reveals no enforcements.

Conclusion

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

Financial Analysis

Operating Budget

The applicant has provided the Current Year (2021) results, and the First (2024) and Third (2026) year operating budget, in 2023 dollars, after the change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2024</u>		<u>2026</u>	
<u>Revenues:</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicare FFS	\$684.74	\$3,268,248	\$584.10	\$2,843,983	\$584.10	\$2,843,983
Medicare MC	\$375.73	\$744,691	\$353.66	\$1,185,822	\$353.66	\$1,185,822
Medicaid FFS	\$226.49	\$5,053,817	\$203.56	\$5,177,752	\$203.56	\$5,177,752
Medicaid MC	\$205.91	\$353,963	\$223.80	\$436,410	\$223.80	\$436,410
Private Pay	\$382.23	\$2,192,455	\$476.32	\$3,276,129	\$476.32	\$3,276,129
Other Revenues		\$875,734		\$0		\$0
Non-Op Revenues		<u>\$1,048,514</u>		<u>\$0</u>		<u>\$0</u>
Total Revenues		\$13,142,899		\$12,920,096		\$12,920,096
<u>Expenses:</u>						
Operating	\$283.08	\$10,339,143	\$257.62	\$10,944,858	\$257.29	\$10,931,010
Capital	<u>\$42.76</u>	<u>\$1,561,837</u>	<u>\$39.54</u>	<u>\$1,679,779</u>	<u>\$40.49</u>	<u>\$1,720,334</u>
Total Expenses	\$325.84	\$11,900,980	\$297.16	\$12,624,637	\$297.78	\$12,651,344
Net Income		<u>\$1,241,919</u>		<u>\$295,459</u>		<u>\$268,752</u>
Patient Days		36,524		42,486		42,486
Occupancy %		83.39%		97.00%		97.00%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2021 payors and 2021 RHCF-4 cost report information. Historical utilization for the base year 2021 was 83.39%.
- The Medicaid Fee for Service reimbursement rate in Years One and Three is based on the facility's 2022 Nursing Home Rate.
- The rates for Medicare Managed Care, Medicaid Managed Care, and Private Pay in Years One and Three are based upon the average rate by payor through July 2022.
- Utilization is expected to increase over the current year's utilization of 83.39% to 97% in Years One and Three because of strengthening relationships with hospital discharge planners, establishment of new referral relationships, and engagement in community outreach programs.
- Projected utilization in Years One and Three is based on facilities most recent census and payer mix.
- The decline in Medicaid Managed Care utilization is due to the carve-out of nursing home benefits from managed long-term care.

Utilization by payer source before and after the change in ownership is as follows:

	<u>Current Year</u>	<u>Year One and Three</u>
	<u>2021</u>	<u>2024 & 2026</u>
Medicare FFS	12.71%	11.46%
Medicare MC	5.45%	7.89%
Medicaid FFS	61.35%	59.87%
Medicaid MC	4.73%	4.59%
Private Pay	<u>15.76%</u>	<u>16.19%</u>
Total	100.00%	100.00%

- Breakeven utilization is projected at 94.78% or 41,515 patient days for Year One and 94.98% or 41,601 patient days in Year Three.
- The facility's Medicaid admissions of 47.4% in 2019 and 14.4% in 2020 exceeded Steuben County's 75% threshold rates of 18.4% for 2019 and 12.2% for 2020. The facility's Medicaid admissions of 7.5% in 2021 doesn't exceed Steuben County's 75% threshold rate of 12.6%. To strengthen the facility's admissions process, the operator will develop a community outreach program to inform surrounding hospitals, home health agencies, assisted living facilities, and adult care facilities of the change in ownership of the facility and that they intend to provide priority to Medicaid recipients seeking admission to residential health care facilities and offer services to difficult to place residents.

Asset Purchase Agreement

The applicant has submitted an executed APA for the sale and acquisition of the operating interests of the RHC. The terms of the agreement are summarized below:

Date:	January 30, 2020
Sellers:	Absolute Center for Nursing and Rehabilitation at Three Rivers, LLC Absolut Center for Nursing and Rehabilitation at Allegany, LLC Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC Absolut Center for Rehabilitation at Gasport, LLC Absolut at Orchard Brooke, LLC Absolut Center for Nursing Rehabilitation at Westfield, LLC and Absolut Facilities Management, LLC
Buyers:	RCA Healthcare Management, LLC
Acquired Assets:	Business and operation of each facility and all inventory, supplies and articles of personal property, including collective bargaining agreements, leases, all facilities contracts, agreements, leases, undertakings, commitments and other arrangements and all contracts entered into on or after ASA effective date with the consent of the seller by the ASA servicer, trade names, logos, trade and service marks associated with the facilities, programs, and acquired assets, all menus, policies and procedures manuals, computer software, copies of all books and records relating to the facilities, all resident/patient records relating to the facilities, and all employee and payroll records of transferred employees, goodwill, transferrable Medicare and Medicaid provider numbers and agreements, rate increases and/or lump sum or other payments, with respect to third party payments, transferable rights to warranties, tangible or intangible assets owned by sellers used or necessary for, the operation of the facilities other than excluded assets.
Excluded Assets:	All insurance policies and claims, and proceeds, relating to events before the ASA effective date, rights and interests of the seller under this agreement and any documents executed in connection with the closing, retroactive rate increases, third-party payments from any source, which become effective before, on or after the closing date for services rendered before the ASA effective date and accounts receivables and proceeds, claims, rights, causes of action, right of recovery, rights of set off and recoupment against any third parties(including any governmental authority and third-party payor programs, Medicare, Medicaid, or private insurance plans and employee assistance program) from the operation of the facilities through end of the day preceding the ASA effective date, sellers' personal property, any assets of the seller not used in connection with the operation of any facility

Assumed Liabilities	All liabilities and obligations relating to the facility and/or the acquired assets arising on or after the ASA effective date, including sellers accounts payable and other liabilities, healthcare, Medicare and Medicaid overpayment and assessment liabilities, liabilities under the assumed contracts, all COBRA and WARN obligations, any liabilities arising out of the ownership or operation of the facilities, seller's liabilities relating to any employees of seller, any liability arising from claims of Medical malpractice and other professional liability of seller or any of its employees, agents or independent contractors, all of seller's accounts payable, any obligations to pay U.S. Trustee fees, any liabilities under any contracts that are not assumed contracts, any loan obligations, including related and intercompany loans, payables, or other obligations other than liabilities concerning the loans or financings of buyer other than any capital leases the reimbursement of which are included in the facilities Medicaid rate.
Purchase Price:	The total price for the facilities included in the APA is \$750,000. \$118,421 is allocated to this application.
Payment of Purchase Price:	\$75,000 (deposit) on the execution of this agreement; \$75,000 on the second anniversary of the ASA effective date; \$250,000 on the third and the final payment of \$350,000 on the fourth anniversary plus the amount of all cure costs associated with the assumption and assignment of the assumed contracts (other than leases payable upon closing).

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

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of 5/22/2023, the facility had \$455,474.78 in outstanding Medicaid liabilities.

Lease Agreement

The applicant has provided an executed lease agreement. The terms are summarized below:

Date:	June 7, 2007
Premises:	A 120-bed RHC located at 101 Creekside Drive, Painted Post, New York
Landlord:	101 Creekside Drive, LLC
Tenant:	Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC
Terms:	10 years
Rental:	\$1,726,847 fixed rent for year one; \$1,744,115 for year two through year eight; \$1,783,358 for year nine through year ten or extension term
Provisions:	Taxes, utilities, insurance, and repairs and maintenance

The lease arrangement is an arm's length agreement. The applicant has submitted two rent reasonableness letters from New York State Licensed Realtors attesting to the reasonableness of the per-square-foot rental.

Administrative Services Agreement

The applicant has provided an executed Administrative Services Agreement, summarized below:

Date:	May 27, 2020
Established Operator:	RCA Servicer at Three Rivers, LLC
Servicer:	RCA Healthcare Management, LLC
Term:	Initial 12 Months with indefinite 1-year renewals until terminated by either or both parties

Responsibilities of the Servicer:	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, RHC 4 reports and Medicare cost reports. Review rate sheets and assist with filing necessary appeals.
Compensation:	\$475,428.36 per year (\$39,619.03 per month)

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. RCA Healthcare Management, LLC also provides consulting services to the other RHCs owned and operated by RCA Servicer.

To strengthen the facility's admissions process, the operator will develop a community outreach program to inform surrounding hospitals, home health agencies, assisted living facilities, and adult care facilities of the change in ownership of the facility and that they intend to provide priority to Medicaid recipients seeking admission to residential health care facilities and offer services to difficult to place residents. In addition, RCA Healthcare Management, LLC provides consulting services to the other RHCs owned and operated by RCA Servicer.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the operations is \$118,421 and will be met with members' equity. BFA Attachment A shows the proposed members' net worth summaries and reveals sufficient equity overall.

The working capital requirement of \$2,104,106 based on two months of the first year's expenses will be satisfied with \$1,052,053 equity from the proposed members, and the remaining \$1,052,053 will be financed through a loan at an interest rate of 5% for a five-year term. The facility has provided a letter of interest from Metropolitan Commercial Bank for this financing. BFA Attachment A, the proposed member's net worth summary shows enough assets overall to meet the acquisition and working capital equity requirements. As previously noted, a disproportionate share affidavit was provided by Orly Liberman to cover any member's equity shortfall. BFA Attachment E provides the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$2,241,249.

The submitted budget indicates that net income of \$295,459 and \$268,752 will be generated for the first and third years, respectively. Revenue growth is based on the recovery of occupancy rates to 2019 pre-pandemic levels, strengthened relationships with hospital discharge planners, and improved referrals. The budget appears reasonable.

BFA Attachment F presents the certified and internal financial summary of Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC, for 2020 through 2021 and the period ending 12/31/2022. As shown, the 2020-2021 certified financials indicate the facility had an average positive net asset position of \$1,018,154, an average positive working capital position of \$680,239, and an average operating loss of \$444,177. The loss was due to the COVID-19 pandemic and its impact on the overall operations of the facility. For the period ending 12/31/2022, the facility achieved a positive net asset position of \$414,481 and a negative working capital position of \$880,175, generating a net loss of \$652,938. The applicant indicated that the reported loss is attributable to increases in operating expenses, including supplies and labor. In addition, the operator is exploring renegotiating vendor contracts to reduce expenses.

BFA Attachment D presents a financial summary of proposed members' affiliated nursing homes based on audited financial statements for the years-ended December 31, 2020, and 2021 and internal financial statements for the period ended December 31, 2022. Between 2020 and 2021, the affiliated facilities maintained positive net asset and working capital positions as well as positive net income from operations with the exception of Autumn View and Golden Hill, which reported negative working capital, Brookhaven

and North Gate, which reported negative working capital, and net losses, Harris Hill and Seneca which reported a net loss, Roscoe which reported, negative equity, and Sunset which reported negative working capital, negative net equity, and a net loss. For the period ending December 31, 2022, the affiliated facilities maintained positive net assets and working capital positions except for Sunset, which reported a \$35,705 equity shortfall. During the same period, the affiliated facilities reported positive net income from operations, with the exception of Autumn View, Garden Gate, Harris Hill, North Gate, Roscoe, Seneca, and Sunset Nursing, all of which reported net losses. The reported net losses are attributable to lower-than-expected occupancy and higher-than-expected staffing costs. To address these losses, the operators are exploring ways to reduce their reliance on staffing agencies, implementing excess operating cost reduction initiatives, as well as improving census by strengthening relationships with hospital discharge planners and referral sources and engaging in community outreach.

Conclusion

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

Attachments

BHFP Attachment	Map
LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net worth summary, members of RCA Servicer at Three Rivers, LLC d/b/a Three Rivers for Rehabilitation and Nursing
BFA Attachment B	Organizational Chart of Original, Proposed and Current Members of the RHCF Operations
BFA Attachment C	Equity Requirement for Operations
BFA Attachment D	Financial Summary of Proposed Member's Affiliated RHCFs
BFA Attachment E	Pro Forma Balance Sheet Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC
BFA Attachment F	2020-2021 Certified and the internal Financial Summary as of 12/31/2022 for Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC



Project # 201267-E
**RCA Servicer at Westfield, LLC d/b/a Westfield Center for
Rehabilitation and Nursing**

Program: Residential Health Care Facility
Purpose: Establishment

County: Chautauqua
Acknowledged: July 17, 2020

Executive Summary

Description

RCA Servicer at Westfield, LLC d/b/a Westfield Center for Rehabilitation and Nursing (Westfield), a New York limited liability company, requests approval to be established as the new operator Absolut Center for Nursing and Rehabilitation at Westfield, LLC, a 120-bed, proprietary, Article 28 residential health care facility (RHCF) located at 26 Cass Street, Westfield (Chautauqua County). Absolut Center for Nursing and Rehabilitation at Westfield, LLC is the current operator of the facility at 26 Cass Street, and Cass Development Company, LLC is the current real property owner. 26 Cass Street, LLC is the current sublandlord.

On January 30th, 2020, Absolut Center for Nursing and Rehabilitation at Westfield, LLC (entered into an Asset Purchase Agreement (APA) with RCA Healthcare Management, LLC for the sale and acquisition of the operating interests of Absolut Center at Westfield and four other Absolut RHCFs, as well as an 80-bed Adult Assisted Living Facility-Absolut at Orchard Brooke. The total purchase price of the five RHCF operations is \$750,000, of which \$118,421 is allocated to this facility.

Upon approval of this application, RCA Servicer at Westfield, LLC will lease the premises from 26 Cass Street, LLC.

The four other nursing homes concurrently being reviewed are:

- CON 201263 – Allegany Center for Rehabilitation and Nursing, p/k/a Absolut Center for Nursing and Rehabilitation at Allegany, LLC, a 320-bed facility located in Cattaraugus County.
- CON 201264 – Aurora Center for Rehabilitation and Nursing, p/k/a Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC, a 320-bed facility located in Erie County.
- CON 201265 – Gasport Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing and Rehabilitation at Gasport, LLC, an 83-bed facility located in Niagara County.
- CON 201266 – Three Rivers Center for Rehabilitation and Nursing p/k/a Absolut Center for Nursing at Three Rivers, LLC, a 120-bed facility located in Steuben County.

Orly Lieberman, one of the proposed members, is concurrently seeking PHHPC approval to be established as a new operator of Sunset Nursing and Rehabilitation Center (CON 191254), a 120-bed facility RHCF in Oneida County.

Orly Lieberman and Michael Farbenblum are concurrently seeking PHHPC approval to be established as new operators of three RHCFs currently operating under a receivership and are as follows:

- CON 222053 – Taconic Rehabilitation and Nursing at Beacon, a 160-bed facility located in Dutchess County.
- CON 222054 – Taconic Rehabilitation and Nursing at Hopewell, a 160-bed facility located in Dutchess County.
- CON 222055 – Taconic Rehabilitation and Nursing at Ulster, a 120-bed facility located in Ulster County.

BFA Attachment C presents the combined equity analysis for the RCA and Taconic transactions and shows the financial ability of all the parties involved to proceed with these projects. In addition, Orly Lieberman has provided a disproportionate share affidavit to provide additional funding to cover the shortfall of two of the proposed RCA facility members.

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

<u>Current Operator</u>	
<u>Absolut Center for Nursing and Rehabilitation at Westfield, LLC</u>	
<u>Members:</u>	<u>%</u>
Absolut Facilities Management, LLC	54.0%
Israel Sherman	45.0%
Sam Sherman	1.0%
Total	100.0%

<u>Proposed Operator</u>	
<u>RCA Servicer at Westfield, LLC d/b/a Westfield Center for Rehabilitation and Nursing</u>	
<u>Members:</u>	
Orly Lieberman	47.0%
Michael Farbenblum*	23.0%
Mordechai Mendlowitz	22.5%
Menachem Tauber	7.5%
Total	100.0%

* *Managing Member of the facility.*

OPCHSM Recommendation Contingent Approval

Need Summary

Occupancy as of April 12, 2023, was 79.2% for the facility and 78.2% for Chautauqua County. There will be no change in beds or services as a result of this application.

Program Summary

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

Financial Summary

RCA Health Management, LLC will acquire the RHCf's operations for \$118,421, funded by members' equity.

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Budget:</u>	<u>(2021)</u>	<u>(2024)</u>	<u>(2026)</u>
Revenues:	\$10,942,203	\$11,206,992	\$11,442,837
Expenses:	<u>10,062,943</u>	<u>11,001,617</u>	<u>11,024,245</u>
Gain/(Loss):	\$879,260	\$205,375	\$418,592

Recommendations

Long Term Care Ombudsman Program

The LTCOP recommends Approval (See LTCOP Attachment A)

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
2. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]

Approval conditional upon:

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

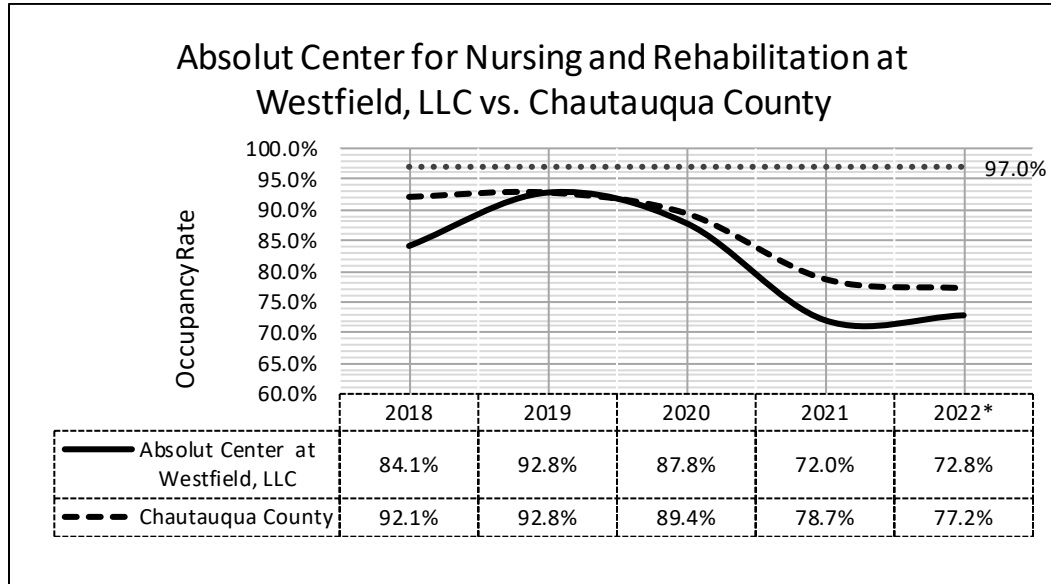
Council Action Date

June 29, 2023

Need Analysis

Background and Analysis

The primary service area is Chautauqua County. Based on U.S. Census population estimates from 2021, the demographics of the county include 93.2% White, 2.9% Black or African American, with 8.1% Hispanic or Latino.



* 2022 data is self-reported and not certified.

Occupancy as of April 12, 2023, was 79.2% for the facility and 78.2% for Chautauqua County. The facility's historical utilization is depicted above. In 2021 they saw a decline to 72%, which can be attributed to the COVID-19 pandemic.

The table below shows the CMS Rating and the utilization of the Article 28 facilities within 27 miles of Absolut Center for Nursing and Rehabilitation at Westfield.

Facility Name	Beds	CMS Overall Rating	Distance from other RHCfs	Occupancy			
				2019	2020	2021	2022
		As of 4/2023	Miles/Time				
Absolut Center at Westfield	120	3	0 miles/0 min	92.80%	87.81%	72.00%	72.8%
Chautauqua Nursing Home	216	4	16.3 miles/21 min	94.50%	86.99%	78.90%	89.2%
Dunkirk Nursing Center	40	2	16.5 miles /21 min	75.80%	84.71%	86.60%	89.3%
Heritage Village	120	2	23.8 miles/31 min	96.50%	94.78%	81.60%	73.1%
Heritage Green	134	1	21.8 miles/29 min	94.91%	94.83%	78.80%	79.0%
Heritage Park	146	2	26.4 miles/35 min	91.44%	92.91%	87.30%	88.6%
Lutheran Retirement Home	148	4	26.7 miles/34 min	91.24%	82.71%	71.10%	50.1%

The following table provides the Case Mix Index (CMI) for the facility and surrounding RCHFs, which reflects the relative resources predicted to provide care to a resident. Higher case mix numbers represent greater resources required for the residents.

Case Mix Index	2019		2020		2021	
	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only	All Payor Mix	Medicaid Only
Absolut Center at Westfield	1.2438	1.02	1.1786	1.1673	1.2272	1.293
Chautauqua Nursing Home	1.2852	1.0437	1.2716	1.2688	1.2624	1.3168
Dunkirk Nursing Center	1.3309	1.1256	1.275	1.1289	1.3562	1.2999
Heritage Village	1.0582	0.8979	1.0624	0.9953	1.1385	1.0488
Heritage Green	1.2942	0.9295	1.1193	1.0113	1.2115	1.0817
Heritage Park	1.2544	1.0022	1.076	1.0034	1.2316	1.0452
Lutheran Retirement Home	1.2807	1.0739	1.1272	1.0661	1.1144	1.0871

Medicaid Access

To ensure that the Residential Health Care Facility needs of the Medicaid population are met, 10 NYCRR §670.3 requires applicants to accept and admit a reasonable percentage of Medicaid residents in their service area. The benchmark is 75% of the annual percentage of residential healthcare facility admissions that are Medicaid-eligible individuals in their planning area. This benchmark may be increased or decreased based on the following factors:

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

The facility's Medicaid admissions rate was above the threshold of 75% of the Chautauqua County rate for 2019 through 2021.

Medicaid Access	2019	2020	2021
Chautauqua County Total	19.8%	14.7%	12.0%
Chautauqua Threshold Value	14.9%	11.0%	9.0%
Absolut Center for Nursing at Westfield	50.5%	17.1%	16.6%

Conclusion

There will not be any changes to beds or services resultant of this change in ownership.

Program Analysis

Program Description

This application proposes to establish RCA Servicer at Westfield, LLC as the new operator of the 120-bed residential health care facility located at 26 Cass Street, Westfield, currently operated as Absolut Center for Nursing and Rehabilitation at Westfield.

Facility Information

	Existing	Proposed
Facility Name	Absolut Center for Nursing and Rehabilitation at Westfield, LLC	Westfield Center for Rehabilitation and Nursing
Address	26 Cass Street Westfield, NY 14787	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Absolut Center for Nursing and Rehabilitation at Westfield, LLC Membership: Israel Sherman 45% Samuel Sherman 1% Absolute Facilities Management, LLC 54% Israel Sherman (100%)	RCA Servicer at Westfield, LLC Membership: Menachem Tauber 7.5% Michael Farbenblum 23% Mordechai Mendlowitz 22.5% Orly Lieberman 47%

Character and Competence

Orly Lieberman lists employment concurrently as a Psychotherapist at the Private Practice of Orly Lieberman, which conducts individual and family psychotherapy sessions located in Valley Stream, NY, since November 2020, and as a Pre-Marital Counselor (Kallah Teacher) since January 2006. Orly Lieberman holds a master's degree in Clinical Mental Health Counseling from St. John's University. Orly Lieberman is licensed as a mental health counselor in New York State and discloses the following ownership interests in health facilities:

Nursing Homes

Sunset Nursing and Rehabilitation Center (N.Y.) (9.9%)	02/2019 to present
Roscoe Rehabilitation and Nursing Center (N.Y.) (1%)	08/2018 to present
Autumn View Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Brookhaven Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Garden Gate Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Harris Hill Nursing Facility, LLC (N.Y.) (50%)	03/2017 to present
North Gate Health Care Facility, LLC (N.Y.) (50%)	03/2017 to present
Seneca Health Care Center, LLC (N.Y.) (50%)	03/2017 to present
Golden Hill Nursing & Rehabilitation Center (N.Y.) (9.54%)	01/2020 to present
Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (47%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (47%)	Pending
Taconic Rehabilitation and Nursing at Beacon (N.Y.) (60%)	Pending
Taconic Rehabilitation and Nursing at Hopewell (N.Y.) (60%)	Pending
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (60%)	Pending

End Dated Ownership

Bishop Rehab and Nursing Center (N.Y.) (1%) 12/2017 to 09/2022

Menachem Tauber lists current employment at Preventive Diagnostic Inc., which is a Mobile X-ray/Ultrasound company located in Brooklyn, NY, as CEO since 2010. Menachem Tauber holds a high school diploma from Yeshiva Belz Monsey and discloses the following health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (7.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (7.5%)	Pending

Diagnostic & Treatment Center

Preventive Diagnostics INC. (portable x-ray) (N.Y.) (100%) 04/2010 to present

Michael Farbenblum lists concurrent employment at The McGuire Group, which is a skilled nursing and rehabilitation business located in Valley Stream, NY, as General Counsel since 2019, and Mr. Farbenblum is also self-employed as a consultant providing legal services and business consulting primarily to skilled nursing facilities and related entities since 2016. Michael Farbenblum holds a Master of Laws degree from New York University School of Law. He is licensed as both a real estate broker as well as an attorney in New York State and is also licensed as an attorney in Connecticut. Mr. Farbenblum discloses the following health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (23%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (23%)	Pending
Taconic Rehabilitation and Nursing at Beacon (N.Y.) (20%)	Pending
Taconic Rehabilitation and Nursing at Hopewell (N.Y.) (20%)	Pending
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (20%)	Pending

Receivership Nursing Homes

Taconic Rehabilitation and Nursing at Beacon (N.Y.) (50%)	07/2022 to present
Taconic Rehabilitation and Nursing at Hopewell (NY) (50%)	07/2022 to present
Taconic Rehabilitation and Nursing at Ulster (N.Y.) (50%)	07/2022 to present

End Dated Ownership

The Hamptons Center for Rehabilitation & Nursing (N.Y.) (5%) 01/2009 to 2/2016

Mordechai Mendlowitz lists concurrent employment at Rubin & Mendlowitz, an elder law legal group, as a partner located in Cedarhurst, NY, since 2014 and Family Guardian Services, Inc., a not-for-profit agency providing Article 81 guardianship services as Executive Director located in Cedarhurst, NY since 2017. Mordechai Mendlowitz holds a Juris Doctor degree from Fordham University School of Law. Mr. Mendlowitz is licensed as both a real estate broker as well as an attorney in New York State. Mordechai Mendlowitz does not disclose any health facility ownership interests:

Nursing Homes

Absolut Center for Nursing and Rehabilitation of Allegany (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Aurora Park (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Gasport (N.Y.) (22.5%)	Pending
Absolut Center for Nursing and Rehabilitation at Three Rivers (N.Y.) (22.5%)	Pending

Quality Review

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

CMS Star Rating Criteria - 10 NYCRR 600.2(b)(5)(iv)					
Duration of Ownership					
<u>Proposed Owner</u>	<u>Total Nursing Homes</u>	<u>< 48 Months</u>		<u>48 months or more</u>	
		<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>	<u>Number of Nursing Homes</u>	<u>Percent of Nursing Homes With a Below Average Rating</u>
Orly Lieberman	9	1	100%	8	12.50%
Menachem Tauber	0	NA	NA	NA	NA
Michael Farbenblum	3	3	100%	NA	NA
Mordechai Mendlowitz	0	NA	NA	NA	NA

DURATION OF OWNERSHIP AS OF 6/29/2023

Data date: 4/2023

New York - The proposed owner's portfolio includes ownership in nine New York facilities, and Michael Farbenblum became the receiver of three New York facilities. Eight of the New York facilities in the ownership portfolio have a CMS overall quality rating of average or higher. The remaining facility Sunset Nursing and Rehabilitation Center, has a CMS overall quality rating of much below average. When asked to explain the low overall CMS ratings for Sunset Nursing and Rehabilitation Center, the applicants indicated the following. The applicants were also asked to explain what was being done to improve the CMS quality rating at the Taconic facilities currently operated under receivership.

Sunset Nursing and Rehabilitation Center's one-star overall CMS quality rating is largely attributable to staffing challenges that have impacted care delivery. Recruiting staff in rural Boonville, New York, is very difficult. Several steps have been taken to address quality and improve operations, including implementing a new Electronic Medical Record-Point Click Care in March 2019, which has improved efficiency and outcomes across all disciplines. The members of the operating entity ("members") have also integrated the facility's policies and procedures with those of their larger organizations to take advantage of best practices. This was a key factor in assisting the facility to maintain operations throughout the pandemic. In September 2021, the members supplied additional recruiter positions at the facility and throughout the organization to focus on interviewing and hiring staff. Additionally, in January 2022, the members strengthened the facility's clinical team by supplying Regional Quality Assurance nurses to provide routine audits of regulatory requirements. On October 3, 2022, the facility hired a new administrator who has over 15 years of experience and a strong history with survey performance.

The following is a list of initiatives that have been implemented to improve CMS quality ratings at Taconic Rehabilitation and Nursing at Beacon, Taconic Rehabilitation and Nursing at Hopewell, and Taconic Rehabilitation and Nursing at Ulster:

- **Recruitment and Retention Initiatives**
 - New rates of pay for direct care staff (CNAs, LPNs, and R.N.s) have been implemented through the new collective bargaining agreement.
 - New recruitment incentive programs have been implemented.
 - Certified Nursing Aide Training Program teaching and testing sites located at Beacon and Hopewell.
 - Evaluation of Systematic processes and data for successful recruitment. Onboarding and retention of new staff, which will incorporate "Best Practices" for all Taconic facilities.
- **Management Briefings.** Beginning in March 2023, management Briefings will be held with each department head and the Administrator, the Regional V.P.s, CNO, and CEO every 8 weeks to review and discuss each aspect of the building and its operations to identify opportunities for improvement and development of a deeper understanding of each facility's operations and unique issues.

- **Capital Improvements.** Capital improvements will be reviewed every 8 weeks at the Management Briefings to ensure staff have the supplies and equipment necessary to provide safe and effective care. Recent capital purchases include new air mattresses, therapy equipment, wheelchairs, wheelchair cushions, vital machines, and washers and dryers.
- **Information Technology.** Significant upgrades impacting all aspects of the I.T. system and infrastructure have been made, including new computers, wiring, wireless internet access, and the purchase of iPads to assist CNAs with documentation. The cumulative effect of these upgrades has resulted in improved electronic communications and workflow, allowing for more time at the resident bedside. Further, the I.T. system enhancements will allow the facility teams to proactively monitor Quality Measures and, where indicated, develop and implement QAPI projects to improve quality measures.
 - Electronic medical record systems have been updated to Point Click Care at Beacon, with the anticipated completion of 3/31/23 at Hopewell and an anticipated completion of 6/2023 at Ulster.
 - Utilization of a real-time Medical System (RTMS), which will be operational by the end of March 2023 and will work in collaboration with PCC.
 - Utilization of StarPro which will provide live updates to the Quality Measures as MDSs are closed, identify residents the trigger for each indicator, and allow the facility to identify trends and implement QAPI programs.
- **Education.** A new education platform, SNF Clinic, will be implemented. This platform will be available to all employed staff and assist them in completing annual mandatory trainings, staff competency trainings, general education trainings, and education related to identified trends.
- **Clinical Support and Guidance.** The regional Team consisting of subject matter experts in the areas of rehabilitation services, MDS, social services, and clinical systems will provide support to facilities.

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
New York					
Absolut Center for Nursing and Rehabilitation at Westfield, LLC	Subject Facility	***	**	*****	**
Sunset Nursing and Rehabilitation Center	Current	*	*	***	*
	02/2019	*	*	**	*
Roscoe Rehabilitation and Nursing Center	Current	****	****	*****	*
	08/2018	*****	****	*****	***
Autumn View Health Care Facility, LLC	Current	****	****	*****	*
	03/2017	*****	****	*****	***
Brookhaven Health Care Facility, LLC	Current	*****	****	*****	***
	03/2017	*****	****	*****	*****
Garden Gate Health Care Facility, LLC	Current	****	****	*****	*
	03/2017	*****	****	*****	****
Harris Hill Nursing Facility, LLC	Current	***	****	****	*
	03/2017	*****	****	*****	****
North Gate Health Care Facility, LLC	Current	****	*****	***	*
	03/2017	****	***	****	****

Facility	Ownership Since	Overall	Health Inspection	Quality Measure	Staffing
Seneca Health Care Center, LLC	Current	*****	****	*****	**
	03/2017	*****	****	*****	****
Golden Hill Nursing & Rehabilitation Center	Current	***	***	****	**
	01/2020	*****	****	*****	**
Taconic Rehabilitation and Nursing at Beacon	Current	**	**	**	***
	07/2022	**	**	**	***
Taconic Rehabilitation and Nursing at Hopewell	Current	**	**	***	****
	07/2022	**	**	**	***
Taconic Rehabilitation and Nursing at Ulster	Current	**	**	***	***
	07/2022	*	*	***	**

Data date: 4/2023

End Dated Ownership					
New York					
Bishop Rehab and Nursing Center	09/2022	SFF	SFF	SFF	SFF
	12/2017	*	*	**	*
The Hamptons Center for Rehabilitation & Nursing	02/2016	***	***	**	**
	01/2009	*	*	**	**

Enforcement History

A review of the operations of Sunset Nursing and Rehabilitation Center for the time period indicated above reveals the following:

- The facility was assessed a federal CMP in the amount of \$6,923.00 and fined \$2,000.00 pursuant to Stipulation and Order NH-21-206 for surveillance findings on 07/21/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of Roscoe Rehabilitation and Nursing Center for the time period indicated above reveals no enforcements.

A review of the operations of Autumn View Health Care Facility, LLC, for the time period indicated above reveals the following:

- The facility was assessed a federal CMP of \$650.00 on 07/19/2021 for failure to report COVID data.

A review of the operations of Brookhaven Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-006 for surveillance findings on 11/16/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was assessed a federal CMP of \$650.00 on 08/30/2021 and \$975.00 on 09/13/2021 for failure to report COVID data.

A review of the operations of Garden Gate Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-22-053 for surveillance findings on 02/11/2022. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of Harris Hill Nursing Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-070 for surveillance findings on 03/17/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-071 for surveillance findings on 01/08/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.

A review of the operations of North Gate Health Care Facility, LLC for the time period indicated above reveals the following:

- The facility was fined \$6,000.00 pursuant to Stipulation and Order NH-22-062 for surveillance findings on 08/21/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was assessed a federal CMP of \$650.00 on 08/02/2021, \$975.00 on 08/09/2021, and \$1,316.00 on 01/17/2022 for failure to report COVID data.

A review of the operations of Seneca Health Care Center, LLC for the time period indicated above reveals the following:

- The facility was fined \$10,000.00 pursuant to Stipulation and Order NH-23-041 for surveillance findings on 01/12/2023. Deficiencies were found under 415.12(h)(2) Quality of Care. The facility failed to ensure that each resident received adequate supervision to prevent accidents.

A review of the operations of Golden Hill Nursing & Rehabilitation Center for the time period indicated above reveals the following:

- The facility was fined \$2,000.00 pursuant to Stipulation and Order NH-21-234 for surveillance findings on 08/31/2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- The facility was fined \$8,000.00 pursuant to Stipulation and Order NH-20-034 for surveillance findings on 06/22/2020. Deficiencies were found under 10 NYCRR 415.19 Infection Control.
- A federal CMP in the amount of \$3,250.00 was also assessed for the surveillance findings on 6/22/2021.
- The facility was assessed a federal CMP of \$655.00 on 01/04/2021 for failure to report COVID data.

A review of Bishop Rehab and Nursing Center for the period specified above reveals the following:

- The facility was assessed a federal CMP of \$75,582.00 and fined \$6,000.00 pursuant to Stipulation and Order# 23-007 issued for surveillance findings on September 7, 2022. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of care Medication Errors. The facility failed to administer prescribed anti-organ rejection medication to a resident for four days and failed to notify the physician of the error. Additionally, the facility failed to administer bi-weekly medication for anemia to the same resident and failed to notify the physician or reschedule the missed dose. The facility also failed to administer monthly intravenous medication to a resident during their stay at the facility and failed to ensure that the medication be administered to the resident following their discharge.
- The facility was assessed a federal CMP of \$9,750.00 and fined \$6,000.00 pursuant to Stipulation and Order# 22-144 issued for surveillance findings on May 4, 2022. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care Adequate Supervision, NYCRR 66-4.1 Vaccinations of Nursing Home Residents and Personnel, and 10 NYCRR 415.19 Infection Control. The facility failed to ensure each resident was offered the COVID-19 vaccine and provide education regarding the benefits and risks, and potential side effects associated with the vaccine. The facility was cited for failure to ensure staff donned a mask before entering the room of a resident who was unvaccinated for influenza and COVID-19. The facility was also cited for failure of a staff member to perform hand hygiene after removing an unclean wound dressing and cleaning a resident's wound.
- On 08/14/2019, the facility was cited for failure to honor the resident's right to request, refuse, and/or discontinue treatment, to participate in or refuse to participate in experimental research, and to formulate an advance directive. Federal Tag 578 at a G level.

- The facility was assessed a federal CMP of \$8,223.00 and fined \$2,000.00 pursuant to Stipulation and Order # 19-052 issued for surveillance findings on August 14, 2019. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii) Request/ Refuse/ Discontinue Treatment, Formulate Advance Directives.
- The facility was assessed a federal CMP of \$8,096.00 on 12/20/2019 for failure to protect each resident from all types of abuse, such as physical, mental, sexual abuse, physical punishment, and neglect by anybody under Federal Tag 600 at a G level.
- On 12/04/2020, the facility was cited for failure to provide appropriate treatment and care according to orders, residents' preferences, and goals under Federal Tag 684 at a G level.
- The facility was assessed a federal CMP of \$19,523.00 during a Covid-19 Infection Control Survey on 12/02/2020 under Federal tag 880 for failure to provide and implement an infection prevention and control program.
- The facility was assessed federal CMP of \$66,319.00 and \$15,000.00 on 09/03/2021 under Federal Tag 836 for failure to ensure the facility is licensed under applicable state and local law and operates and provides services in compliance with all applicable federal, state, and local laws, regulations, and codes, and with accepted professional standards.
- On 10/25/2021, the facility was assessed a federal CMP of \$81,319.00 for failure to prepare residents for a safe transfer or discharge from the nursing home under Federal Tag 624 at a G level.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on September 23, 2021. Deficiencies were found under 10 NYCRR 415.12(h) Quality of Care Adequate Supervision. The facility failed to supervise a resident at risk of elopement, who attempted to elope through their third-story window, resulting in fatal injuries. The facility was cited for failure to ensure that a nursing home area is free from accident hazards and provides adequate supervision to prevent accidents. Federal Tag 689 at a J level.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on September 20, 2021. Deficiencies were found under 10 NYCRR 415.19 Infection Control. Facility staff was observed wearing their face mask below their nose.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 22-076 issued for surveillance findings on October 25, 2021. Deficiencies were found under 10 NYCRR 415.3(i) Transfer and Discharge Rights. The facility discharged a resident without ensuring the resident, PHL surrogate, or a family member understood the discharge and with the medications ordered for a different resident. The resident ingested these medications for seven days and subsequently went into cardiac arrest.
- The facility was fined \$14,000.00 pursuant to Stipulation and Order # 21-200 issued for surveillance findings on January 17, 2020, and September 25, 2020. Deficiencies were found under 10 NYCRR 415.12. On 09/25/2020, the facility did not reassess a resident who fell and complained of severe pain when the resident's clinical condition did not improve; the facility failed to timely implement a stat order for an x-ray. On 01/17/2020, the facility did not timely perform a blood clotting test (PT/INR) as ordered for a resident on blood thinning medications. Also, the facility did not implement an order to treat a resident's skin reaction to a therapeutic treatment.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 21-168 issued for surveillance findings on December 4, 2020. Deficiencies were found under 10 NYCRR 415.12(f)(1)(2). The facility failed to ensure residents received treatment and care in accordance with professional standards of practice.
- The facility was fined \$10,000.00 pursuant to Stipulation and Order # 21-041 issued for surveillance findings on December 20, 2019, and September 17, 2020. Deficiencies were found under 10 NYCRR 415.19(a)(1) and (2), 400.2, and 415.4(b). The facility failed to maintain an infection control program by failing to enforce PPE requirements and had four events of not wearing a face mask within six feet of a resident. Also, the facility failed to ensure a resident was not free from abuse, and staff immediately reported abuse.
- The facility was fined \$2,000.00 pursuant to Stipulation and Order # 19-052 issued for surveillance findings on August 14, 2019. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii), Right to Privacy. Each resident shall have the right to personal privacy and confidentiality of his or her personal and clinical records, which shall reflect the resident's right to approve or refuse the release of personal and clinical records to any individual outside the facility except when the resident is transferred to another health care institution; or record release is required by law.

A review of the operations of Taconic Rehabilitation and Nursing at Beacon for the time period indicated above reveals no enforcements.

A review of the operations of Taconic Rehabilitation and Nursing at Hopewell for the time period indicated above reveals no enforcements.

A review of the operations of Taconic Rehabilitation and Nursing at Ulster for the time period indicated above reveals no enforcements.

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

Operating Budget

The applicant has provided the Current Year (2021) results, and the First (2024) and Third (2026) year operating budget, in 2023 dollars, after the change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2024</u>		<u>2026</u>	
<u>Revenues:</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Medicare FFS	\$690.75	\$1,966,575	\$577.13	\$1,950,122	\$577.13	\$1,991,099
Medicare MC	\$390.95	862,048	\$419.19	1,213,974	\$419.19	1,239,545
Medicaid FFS	\$210.81	4,529,845	\$202.04	5,844,411	\$202.04	5,967,453
Medicaid MC	\$201.61	550,596	\$232.46	536,750	\$232.46	548,141
Private Pay	\$365.07	819,209	\$405.40	1,661,735	\$405.40	1,696,599
Net Pt. Revenues		\$8,728,273		\$11,206,992		\$11,442,837
Other Oper. Rev.		1,271,044		0		0
Total Op. Rev.		\$9,999,317		11,206,992		\$11,442,837
Non-Oper. Rev.		942,886		0		
Total Revenues		<u>\$10,942,203</u>		<u>\$11,206,992</u>		<u>\$11,442,837</u>
 <u>Expenses:</u>						
Operating	\$285.69	\$9,003,438	\$238.08	\$9,006,352	\$234.11	\$9,946,351
Capital	<u>\$33.62</u>	<u>1,059,505</u>	<u>26.32</u>	<u>1,095,265</u>	<u>\$25.37</u>	<u>1,077,894</u>
Total Expenses	\$319.31	\$10,062,943	\$264.40	\$11,001,617	\$259.48	\$11,024,245
Net Income		<u>\$879,260</u>		<u>\$205,375</u>		<u>\$418,592</u>
Patient Days		31,515		41,610		42,486
Occupancy		71.95%		95.00%		97.00%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2021 payors and 2021 RHCF-4 cost report information. Historical utilization for the base year 2021 was 71.95%.
- The Medicaid Fee for Service reimbursement rate in Years One and Three is based on the facility's 2022 Nursing Home Rate.
- The rates for Medicare Managed Care, Medicaid Managed Care, and Private Pay in Years One and Three are based upon the average rate by payor through July 2022.
- Projected revenue and rate increases for Medicare Fee for Service and Managed Care are based on the assumption the occupancy rates will recover to 2019 pre-pandemic levels.
- Utilization is expected to increase over the current year's utilization of 71.95% to 97% in Year Three because of strengthening relationships with hospital discharge planners, the establishment of new referral relationships, and engagement in community outreach programs.
- Projected utilization in Years One and Three is based on facilities most recent census and payer mix.
- The decline in Medicaid Managed Care utilization is due to the carve-out of nursing home benefits from managed long-term care.

Utilization by payor source is as follows:

	<u>Current Year</u>	<u>Years One & Three</u>
Medicare FFS	9.03%	8.12%
Medicare MC	7.00%	6.96%
Medicaid FFS	68.18%	69.52%
Medicaid MC	8.67%	5.55%
Private Pay	7.12%	9.85%
Total	100.00%	100.00%

- Breakeven utilization is projected at 93.26% or 40,847 patient days for Year One and 93.45% or 40,932 patient days in Year Three.
- The facility's Medicaid admissions of 17.1% in 2020 and 16.6% in 2021 exceeded Chautauqua County's 75% threshold rates of 11.0% for 2020 and 12.5% for 2021.

Asset Purchase Agreement

The applicant has submitted an executed APA for the sale and acquisition of the operating interests of the RHCF. The terms of the agreement are summarized below:

Date:	January 30, 2020
Sellers:	Absolut Center for Nursing and Rehabilitation at Allegany, LLC Absolut Center for Nursing and Rehabilitation at Aurora Park, LLC Absolut Center for Rehabilitation at Gasport, LLC Absolut at Orchard Brooke, LLC Absolut Center for Nursing and Rehabilitation at Three Rivers, LLC Absolut Center for Nursing Rehabilitation at Westfield, LLC and Absolut Facilities Management, LLC
Purchaser:	RCA Healthcare Management, LLC
Acquired Assets:	Business and operation of each facility and all inventory, supplies and articles of personal property, including collective bargaining agreements, leases, all facilities contracts, agreements, leases, undertakings, commitments and other arrangements and all contracts entered into on or after ASA effective date with the consent of the seller by the ASA servicer, trade names, logos, trade and service marks associated with the facilities, programs, and acquired assets, all menus, policies and procedures manuals, computer software, copies of all books and records relating to the facilities, all resident/patient records relating to the facilities, and all employee and payroll records of transferred employees, goodwill, transferrable Medicare and Medicaid provider numbers and agreements, rate increases and/or lump sum or other payments, with respect to third party payments, transferable rights to warranties, tangible or intangible assets owned by sellers used or necessary for, the operation of the facilities other than excluded assets.
Excluded Assets:	All insurance policies and claims, and proceeds, relating to events before the ASA effective date, rights and interests of the seller under this agreement and any documents executed in connection with the closing, retroactive rate increases, third-party payments from any source, which become effective before, on or after the closing date for services rendered before the ASA effective date and accounts receivables and proceeds, claims, rights, causes of action, right of recovery, rights of set off and recoupment against any third parties(including any governmental authority and third-party payor programs, Medicare, Medicaid, or private insurance plans and employee assistance program) from the operation of the facilities through end of the day preceding the ASA effective date, sellers' personal property, any assets of the seller not used in connection with the operation of any facility

Assumed Liabilities:	All liabilities and obligations relating to the facility and/or the acquired assets arising on or after the ASA effective date, including sellers accounts payable and other liabilities, healthcare, Medicare and Medicaid overpayment and assessment liabilities, liabilities under the assumed contracts, all COBRA and WARN obligations, any liabilities arising out of the ownership or operation of the facilities, seller's liabilities relating to any employees of seller, any liability arising from claims of Medical malpractice and other professional liability of seller or any of its employees, agents or independent contractors, all of seller's accounts payable, any obligations to pay U.S. Trustee fees, any liabilities under any contracts that are not assumed contracts, any loan obligations, including related and intercompany loans, payables, or other obligations other than liabilities concerning the loans or financings of buyer other than any capital leases the reimbursement of which are included in the facilities Medicaid rate.
Purchase Price:	The total price for the facilities included in the APA is \$750,000. \$118,421 is allocated to this application.
Payment of Purchase Price:	\$75,000 deposit due upon execution of this agreement, \$75,000 on the second anniversary of the ASA Effective Date, \$250,000 on the third anniversary of the ASA Effective Date, and the final payment of \$350,000 due on the fourth anniversary of the ASA effective date, plus the amount of all cure costs associated with the assumption and assignment of the assumed contracts (other than leases payable upon closing).

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

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of May 22, 2023, the facility had a Medicaid liability of \$160,655.95.

Lease Agreement

The applicant has provided an executed prime lease agreement, the terms of which are summarized as follows:

Date:	June 21, 1984
Premises:	A 120-bed RHCF located at 26 Cass Street, Westfield, New York
Lessor:	Cass Development Company
Lessee:	Westfield Health Care Center, Inc.
Term:	40 years
Rent:	\$822,000 per year (\$68,500 per month)
Provisions:	Taxes, utilities, insurance, and repairs and maintenance

Assignment of Lease Agreement

The applicant has provided an assignment of the prime lease agreement, the terms of which are summarized as follows:

Date:	June 21, 1984
Premises:	A 120-bed RHCF located at 26 Cass Street, Westfield, New York
Assignor:	Westfield Health Care Center, Inc.
Assignee:	26 Cass Street LLC

Sublease Agreement

The applicant has provided an executed sublease agreement, the terms of which are summarized as follows:

Date:	June 7, 2007
Premises:	A 120-bed RHCf located at 26 Cass Street, Westfield, New York
Sublandlord:	26 Cass Street, LLC
Tenant:	Absolut Nursing and Rehabilitation Center at Westfield, LLC
Term:	10 years
Rent:	\$822,000 per year (\$68,500 per month)
Provisions:	Taxes, utilities, insurance, and repairs and maintenance

The applicant has submitted an affidavit stating that the sub-lease arrangement is a non-arm's length agreement. Letters from two New York State realtors have been provided attesting to the rent being of fair market value.

Administrative Services Agreement

The applicant has provided an executed administrative services agreement, summarized below:

Date:	May 27, 2020
Established Operator:	RCA Servicer at Westfield, LLC
Servicer:	RCA Healthcare Management LLC
Term:	Initial term is 12 months, with an automatic 1-year renewal until terminated by either party.
Responsibilities of the Servicer:	Participating in any on-site inspections of the facility by any governmental authority or mortgagee, assist established operator as to the maintenance and repair requirements under the mortgage and local codes, including but not limited to cleaning, painting, decorating, plumbing, carpentry, grounds care, and other maintenance as necessary, assist the Established Operator in developing its internal and external marketing data and community relations and outreach, selection, and hiring of any replacement administrator and assistant administrator, selection and hiring of any replacement Director of Nursing, developing and implementing business development programs, coordinating Established Operator related licensure and certification renewals. Consult with Established Operator regarding the types of insurance, amounts of coverage, premium, and issuers to be carried with respect to the facility and its operations.
Fees:	\$417,783.48 per year (\$34,815.29 per month)

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. RCA Healthcare Management, LLC also provides consulting services to the other RHCfs owned and operated by RCA Servicer.

To strengthen the facility's admissions process, the operator will develop a community outreach program to inform surrounding hospitals, home health agencies, assisted living facilities, and adult care facilities of the change in ownership of the facility and that they intend to provide priority to Medicaid recipients seeking admission to residential health care facilities and offer services to difficult to place residents. In addition, RCA Healthcare Management, LLC provides consulting services to the other RHCfs owned and operated by RCA Servicer.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the RHCF's operations is \$118,421 and will be met with members' equity. BFA Attachment A, proposed members' net worth summaries, reveals sufficient equity overall.

The working capital requirement is \$1,833,603 based on two months of the first year's expenses. Working capital will be satisfied with \$916,801 in proposed members' equity and a bank loan for \$916,802 at 5.00% interest for a five-year term. The facility has provided a Letter of Interest from Metropolitan Commercial Bank for this financing. BFA Attachment A, the proposed member's net worth summary shows enough assets overall to meet the acquisition and working capital equity requirements. As previously noted, a disproportionate share affidavit was provided by Orly Liberman to cover any member's equity shortfall. BFA Attachment E provides the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$459,719.

The submitted budget projects a net income in Years One and Three of \$205,375 and \$418,592, respectively. Revenue growth is based on the recovery of occupancy rates to 2019 pre-pandemic levels, strengthened relationships with hospital discharge planners, and improved referrals. The budget appears reasonable.

BFA Attachment F presents the certified and internal financial summary of Absolut Center for Nursing and Rehabilitation at Westfield, LLC, for 2020 through 2021 and the period ending 12/31/2022. As shown, the 2020-2021 certified financials indicate the facility had an average negative net asset position of \$28,647, an average negative working capital position of \$5,920, and an average net income of \$357,078. The negative net asset and working capital position were due to the COVID-19 pandemic and its impact on the overall operations of the facility. For the period ending 12/31/2022, the facility achieved a negative net asset position of \$496,376 and a negative working capital position of \$750,434, generating a net loss of \$1,700,657. The applicant indicated that the reported loss is attributable to increases in operating expenses, including supplies and labor. In addition, the operator is exploring renegotiating vendor contracts to reduce expenses.

BFA Attachment D presents a financial summary of proposed members' affiliated nursing homes based on audited financial statements for the years-ended December 31, 2020, and 2021 and internal financial statements for the year ended December 31, 2022. Between 2020 and 2021, the affiliated facilities maintained positive net asset and working capital positions as well as positive net income from operations with the exception of Autumn View and Golden Hill, which reported negative working capital, Brookhaven and North Gate, which reported negative working capital and net losses, Harris Hill and Seneca which reported a net loss, Roscoe which reported, negative equity, and Sunset which reported negative working capital, negative net equity, and a net loss. For the period ending December 31, 2022, the affiliated facilities maintained positive net assets and working capital positions except for Sunset, which reported a \$35,705 equity shortfall. During the same period, the affiliated facilities reported positive net income from operations, with the exception of Autumn View, Garden Gate, Harris Hill, North Gate, Roscoe, Seneca, and Sunset Nursing, all of which reported net losses. The reported net losses are attributable to lower-than-expected occupancy and higher-than-expected staffing costs. To address these losses, the operators are exploring ways to reduce their reliance on staffing agencies, implementing excess operating cost reduction initiatives, as well as improving census by strengthening relationships with hospital discharge planners and referral sources and engaging in community outreach.

Conclusion

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

Attachments

BHFP Attachment	Map
LTCOP Attachment	Long Term Care Ombudsman Program Recommendation
BFA Attachment A	Net Worth Summary of RCA Servicer at Westfield, LLC d/b/a Westfield Center for Rehabilitation and Nursing
BFA Attachment B	Organizational Chart
BFA Attachment C	Equity Requirement for Operations
BFA Attachment D	Financial Summary of Proposed Members' Affiliated RHCFs 2020 – 2021 and December 31, 2022
BFA Attachment E	Pro Forma Balance Sheet
BFA Attachment F	Financial Summary - Absolut Center for Nursing and Rehabilitation at Westfield, LLC 2020 – 2022



Project # 222159-E
**Maples Assisted Living Facility, LLC d/b/a The Maples Adult
Living Community**

Program: LHCSA
Purpose: Establishment

County: Oswego
Acknowledged: November 25, 2022

Executive Summary

Description

The Maples Assisted Living Facility, LLC, a limited liability company, requests approval to obtain licensure as a Licensed Home Care Services Agency under Article 36 of the Public Health Law.

The Licensed Home Care Services Agency (LHCSA), to be known as The Maples Assisted Living Facility, LLC d/b/a The Maples Adult Living Community, will be associated with the Assisted Living Program (ALP) to be operated by The Maples Assisted Living Facility, LLC. The LHCSA and the ALP will have identical membership.

The applicant proposes to provide the following health care services: Nursing, Home Health Aide, and Personal Care Aide.

OALTC Recommendation

Contingent 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 only serving patients associated with the Assisted Living Program (ALP), 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).

Financial Summary

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Counsel

Approval contingent upon:

1. Submission of a copy of an executed Certificate of Assumed Name that is acceptable to The Department [CSL].
2. Submission of a copy of Articles of Organization that are acceptable to the Department. [CSL]
3. Submission of a copy of an Operating Agreement that is acceptable to the Department. [CSL]

Council Action Date

June 29, 2023

Program Analysis

Program Description

The Maples Assisted Living Facility, LLC, a limited liability company, requests approval to obtain licensure as a Licensed Home Care Services Agency under Article 36 of the Public Health Law.

The Licensed Home Care Services Agency (LHCSA), to be known as The Maples Assisted Living Facility, LLC d/b/a The Maples Adult Living Community, will be associated with the Assisted Living Program (ALP) to be operated by The Maples Assisted Living Facility, LLC. The LHCSA and the ALP will have identical membership.

The applicant proposes to provide the following health care services: Nursing, Home Health Aide, and Personal Care Aide.

Character and Competence Review

The membership of Maples Assisted Living Facility, LLC is comprised of the following individuals:

Atom Z. Avery - 50% Self-Employed, Property Management & Development

Affiliations

- The Gardens by Morningstar, LLC (Adult Care Facility) (January 13, 2016 – Present)
- Oswego Hospital, Inc (Community Hospital) (2013-Present)
- Seneca Hill Manor, Inc (Nursing Home) (2013-Present)

Qualified to operate the proposed facility due to experience operating and partnering in an active, successful home care agency since 2016.

Micheal Stephens, MD - 50% Physician of Family practice, Oswego Health PC

Affiliations

- Oswego Hospital, Inc (Community Hospital) (2013-2018)
- Seneca Hill Manor, Inc (Nursing Home) (2013-2018)

Qualified to operate the proposed facility given the 25 years of experience providing primary care to all populations, including geriatric care.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a certified home health 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. Facility Compliance/Enforcement, The Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the above-mentioned adult care facilities and reports as follows:

- The Gardens by Morningstar, LLC d/b/a The Gardens by Morningstar was fined \$36,099 pursuant to a Stipulation and Order for inspection findings on August 31, 2016, and October 5, 2017, for violations of Article 7 of the Social Services Law and 18 NYCRR Part 486.

The information provided by the Bureau of Quality and Surveillance and the Division of Hospitals and Diagnostics & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

Need Review

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is only serving patients associated with the Assisted Living Program (ALP), 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.

Workforce Review

The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. See Attachment A.

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	Attachment A
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**Project # 22215-E
Premier Upstate Properties LLC d/b/a Visiting Angels**

Program: LHCSA
Purpose: Establishment

County: Chemung
Acknowledged: December 23, 2022

Executive Summary

Description

Premier Upstate Properties LLC d/b/a Visiting Angels, a Limited Liability Company, 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 Chemung, Schuyler, and Steuben Counties from an office located at 168 Miller Street, #B103, Horseheads, New York 14845.

The applicant proposes to provide the following healthcare services: Nursing, Home Health Aide, Personal Care Aide, Homemaker, and Housekeeper.

OALTC Recommendation
Contingent Approval

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).

Financial Summary

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.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Counsel

Approval contingent upon:

- 1.) Submission of a photocopy of the Operating Agreement, acceptable to the Department. [CSL]
- 2.) Submission of a photocopy of the Articles of Organization, acceptable to the Department. [CSL]

Council Action Date

June 29, 2023

Program Analysis

Program Description

Premier Upstate Properties LLC d/b/a Visiting Angels, a Limited Liability Company, 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 168 Miller Street, #B103, Horseheads, New York 14845:

Chemung Schuyler Steuben

The applicant proposes to provide the following healthcare services:

Nursing Home Health Aide Personal Care Aide
Homemaker Housekeeper

Character and Competence Review

The membership interest for Premier Upstate Properties LLC d/b/a Visiting Angels will be split between Edward Thomas Booth and Courtney Carr.

Edward Thomas Booth – 50% interest

Operator, Premier Upstate Properties d/b/a Visiting Angels Horseheads (Companion Care)

Healthcare Affiliations

- None

Edward Booth has experience in sales, marketing, project management, operations, accounting, and management. Has been operating a companion care agency for the last 6 ½ years.

Courtney Carr – 50% interest

Co-Owner/Registered Nurse, Premier Upstate Properties d/b/a Visiting Angels Horseheads (Companion Care)

Registered Nurse, Amot Ogden Medical Center, Falck Cancer Center (Oncology)

Healthcare Affiliations

- None

Courtney Carr graduated from Elmira College Nursing School and is now a registered nurse in New York with experience in Critical Care, Emergency Room Care, Oncology, and Radiology. She is certified in Advanced Cardiac Life Support, Basic Life Support, and Infection Control.

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.

Workforce Review

The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. See Attachment A.

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	Attachment A
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**Project # 222242-E
Hearthstone Care, LLC**

Program: LHCSA
Purpose: Establishment

County: Greene
Acknowledged: December 23, 2022

Executive Summary

Description

Hearthstone Care LLC, a limited liability company, requests approval to obtain licensure as a Licensed Home Care Services Agency under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of the following counties from an office located at 1187 Route 23A Catskill, NY 12414: Greene, Delaware, Rensselaer, Columbia, and Schoharie.

The applicant proposes to provide the following health care services: Nursing, Home Health Aide, Personal Care Aide, Physical Therapy, Occupational Therapy, Medical Supplies, Equipment & Appliances, Medical Social Work, Housekeeper, Nutrition, and Homemaker.

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).

Financial Summary

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Counsel

Approval contingent upon:

Submission of a copy of the amended operating agreement of the applicant, acceptable to the Department, [CSL]

Office of Aging and Long-Term Care

Approval is recommended.

Council Action Date

June 29, 2023

Program Analysis

Program Description

Hearthstone Care LLC, a limited liability company, requests approval to obtain licensure as a Licensed Home Care Services Agency under Article 36 of the Public Health Law.

The applicant proposes to serve the residents of the following counties from an office located at 1187 Route 23A Catskill, NY 12414:
Greene, Delaware, Rensselaer, Columbia, and Schoharie.

The applicant proposes to provide the following healthcare services:

Nursing, Home Health Aide, Personal Care Aide, Physical Therapy, Occupational Therapy, Medical Supplies, Equipment & Appliances, Medical Social Work, Housekeeper, Nutrition, and Homemaker.

Character and Competence Review

The membership of Hearthstone Care, LLC is comprised of the following individuals:

Dmitriy Bobkov – 50% Director

Atos Executive Advisor, WCH Service Bureau Inc.

Affiliations • Hearthstone Care, LLC (Senior Adult Day program) (2016-Present)

Broad experience in areas of IT, Health care revenue cycle management, and real estate management.

Vitaliy Bobkov - 50% CEO

Hearthstone Care, LLC Partner, B&B Lounge

Affiliations • Hearthstone Care, LLC (Senior Adult Day program) (2016-Present)

• HS Gentle Care (Non-Emergency Medical Transportation) (2022-present)

Versatile in various aspects of the business. Professional manager/operator of social adult day care, in-home companion care, and non-emergency medical transportation.

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.

Workforce Summary The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. See Attachment A.

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

Attachment A



**Project # 231136-E
Welbe Health NY PACE, LLC**

Program: LHCSA
Purpose: Establishment

County: Kings
Acknowledged: March 30, 2023

Executive Summary

Description

Welbe Health NY PACE, LLC (“Welbe”), a limited liability company formed in Delaware, requests approval for licensure as a Licensed Home Care Services Agency, under Article 36 of the Public Health Law.

This application seeks approval to establish a new Licensed Home Care Services Agency (LHCSA) to exclusively serve enrollees of the Welbe Health Article 44 Program of All-Inclusive Care for the Elderly (PACE). Welbe Health NYC PACE, LLC has applied to be certified as a PACE provider under Article 44 of the Public Health Law, the application is currently under review by the Office of Health Insurance Programs.

The LHCSA will serve PACE enrollees in the following counties from an office located at 5521 8th Avenue, Brooklyn, New York 11220: Bronx Queens Richmond Kings New York

The applicant proposes to provide the following services: Nursing, Home Health Aide, Personal

Care Aide, Physical Therapy, Occupational Therapy, and Speech/Language Pathology.

OALTC Recommendation
Approval is Recommended

Need Summary

In accordance with 10 NYCRR 765-1.16(c)(3), this application is exempt from Public Need review as the agency will only be serving Program of All-Inclusive Care for the Elderly (PACE) patients.

Program Summary

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

Financial Summary

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

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

June 29, 2023

Program Analysis

Program Description

Welbe Health NY PACE, LLC (“Welbe”), a limited liability company formed in Delaware, requests approval for licensure as a Licensed Home Care Services Agency, under Article 36 of the Public Health Law.

This application seeks approval to establish a new Licensed Home Care Services Agency (LHCSA) to exclusively serve enrollees of the Welbe Health Article 44 Program of All-Inclusive Care for the Elderly (PACE). Welbe Health NYC PACE, LLC has applied to be certified as a PACE provider under Article 44 of the Public Health Law, the application is currently under review by the Office of Health Insurance Programs.

Character and Competence Review

The board of Welbe Health NY PACE, LLC is as follows:

Clancy Si France, CEO
CEO & Board Manager, Welbe Health, LLC

Affiliations

- Welbe Health NY PACE, LLC
- Welbe Health HC Nocal, LLC (CHHA, CA) (2021 – Present)
- Welbe Health HC Socal, LLC (CHHA, CA) (2021 – Present)
- LA Coast PACE, LLC (PACE, CA) (2018 – 2022)
- Sequoia PACE, LLC (PACE, CA) (2018 – 2022)
- Pacific PACE, LLC (PACE, CA) (2017 – 2022)
- Stockton PACE, LLC (PACE, CA) (2016 – Present)

Matt Patterson, MD, President
President, Welbe Health, LLC

Affiliations

- Welbe Health HC Nocal, LLC (CHHA, CA) (2021 – Present)
- Welbe Health HC Socal, LLC (CHHA, CA) (2021 – Present)
- LA Coast PACE, LLC (PACE, CA) (2018 – Present)
- Sequoia PACE, LLC (PACE, CA) (2018 – Present)
- Pacific PACE, LLC (PACE, CA) (2017 – Present)
- Stockton PACE, LLC (PACE, CA) (2016 – Present)

Ethan Epstein, Treasurer Chief Financial, Officer Welbe Health, LLC

Affiliations

- Welbe Health HC Nocal, LLC (CHHA, CA) (2021 – Present)
- Welbe Health HC Socal, LLC (CHHA, CA) (2021 – Present)
- LA Coast PACE, LLC (PACE, CA) (2018 – Present)
- Sequoia PACE, LLC (PACE, CA) (2018 – Present)
- Pacific PACE, LLC (PACE, CA) (2017 – Present)
- Stockton PACE, LLC (PACE, CA) (2016 – Present)

Blaire Bernard, Secretary
General Counsel, Welbe Health, LLC

- Welbe Health HC Nocal, LLC (CHHA, CA) (2023 – Present)
- Welbe Health HC Socal, LLC (CHHA, CA) (2023 – Present)
- LA Coast PACE, LLC (PACE, CA) (2023 – Present)
- Sequoia PACE, LLC (PACE, CA) (2023 – Present)
- Pacific PACE, LLC (PACE, CA) (2023 – Present)
- Stockton PACE, LLC (PACE, CA) (2023 – Present)

George Liu, MD
Owner/Practitioner, United Asian Medical PLLC
Owner/Practitioner, Asian Diabetes Center, LLC
Owner/Practitioner, Accord Medical Care, PC

Affiliations

- United Asian Medical, PLLC (Medical Practice) (December 1997 – Present)
- Asian Diabetes Center (Medical Practice) (December 1997 – Present)
- Accord Medical Center, PC (Medical Practice) (January 2020 – Present)
- Chinese American IPA, Inc. (IPA) (December 1997 – Present)
- CAIPA Care, LLC (ACO) (May 2017 – Present)
- Asian American Accountable Care Organization, LLC (ACO) (November 2010 – Present)
-

The board of Welbe Health PACE, LLC is as follows:

Clancy Si France, CEO - Disclosed Above
Matt Patterson, President - Disclosed Above
Ethan Epstein, Treasurer - Disclosed Above
Blaire Bernard, Secretary - Disclosed Above

The board of Welbe Health, LLC is as follows:

Byron Adams Adjunct Professor, Santa Clara University
Co-Founder, The Center for Conscientious Capitalism

Blaire Bernard, Secretary- Disclosed Above

Liam Donohue
Managing Partner, Point 406 Ventures Management L.P.

Affiliations

- Ascellus Behavioral Health (FL) (2020 – Present)
- Wayspring Clinic (Telehealth, IN) (2015 – Present)

Ethan Epstein, CFO, Treasurer - Disclosed Above

Clancy Si France, CEO - Disclosed Above

Greg Grunberg, MD Managing Director, Longitude Capital Management, Co., LLC

Jonathan Lim Partner, F-Prime Capital Partners Affiliations

- Chicago Behavioral Hospital (Psychiatric Hospital, IL) (April 13, 2015 – Present)
- Lake Behavioral Hospital (Psychiatric Hospital, IL) (March 1, 2018 – Present)
- Silver Oaks Behavioral Hospital (Psychiatric Hospital, IL) (January 1, 2019 – Present)
- Ridgeview Institute (Psychiatric Hospital, GA) (January 17, 2023 – Present)
- Ridgeview Institute – Monroe (Psychiatric Hospital, GA) (January 1, 2017 – Present)”
- Smokey Point Behavioral Hospital (Psychiatric Hospital, WA) (June 1, 2017 – Present)
- South Sound Behavioral Hospital (Psychiatric Hospital, WA) (July 1, 2019 – Present)
- Hendricks Behavioral Hospital (Psychiatric Hospital, IN) (February 1, 2021 – Present)

Robert Margolis, MD (CA) Retired

Matt Patterson, President - Disclosed Above
Nicholas Vorhoff Managing Director, General Atlantic Service Company, L.P.
Michael Zubkoff Professor, Dartmouth College

The board of CAIPA Care, LLC is as follows:

George Liu, Chairman, MD - Disclosed Above
Peggy Sheng, CEO, CEO, CAIPA Care, LLC

Affiliations

- Chinese American IPA, Inc. (April 1995 – Present)
- CAIPA Care, LLC (March 2017 – Present)

Sun Hoo Foo, MD, President
 Owner/Practitioner, Sun Hoo Foo, MD

Affiliations

- Chinese American IPA, Inc. (April 1995 – Present)
- Sun Hoo Foo, MD (Medical Practice) (January 1998 – Present)
- CAIPA Care, LLC (March 2017 – Present)

Kelly Kwok, CPA, Controller Controller, CAIPA MSO, LLC

Affiliations

- Chinese American IPA, Inc. (January 2017 – Present)
- CAIPA Care, LLC (March 2017 – Present)

Wai Lap Leung, MD, Secretary Owner/Practitioner, Wai Lap Leung, MD

Affiliations

- Chinese American IPA, Inc. (January 1998 – Present)
- CAIPA Care, LLC (May 2017 – Present)
- Wai Lap Leung, MD (January 1998 – Present)

Tai-Chen (Annie) Chu, Compliance Officer
 Compliance Officer, CAIPA MSO, LLC

Richard Ng, MD, Chief Medical Officer
 Medical Director, CAIPA Care, LLC
 Medical Director, CAIPA MSO, LLC

Affiliations

- Coalition of Asian American IPA (September 2013 – December 2019)
- CAIPA MSO, LLC (January 2020 – Present)

Jonathan Chang, MD Owner/Practitioner, Chang Jonathan Maung Tin Physician PC

Affiliations

- Chinese American IPA, Inc. (July 2004 – Present)
- Chang Jonathan Maung Tin Physician PC (July 2004 – Present)
- CAIPA Care, LLC (May 2017– Present)

Ching-Yin Lam, MD Owner/Practitioner, Ching-Yin Lam, MD

Affiliations

- Chinese American IPA, Inc. (January 1998 – Present)
- CAIPA Care, LLC (September 2017 – Present)
- Ching-Yin Lam, MD (July 1991 – Present)

Paul K. Sheng, MD
 Owner/Practitioner, Natural Health Chiropractic

Oi Tseun Tung Unemployed Affiliations • CAIPA Care, LLC (May 2017 – Present)

The board of Chinese American IPA, Inc. is as follows:

Jonathan Chang - Disclosed Above
 Tai-Chen (Annie) Chu - Disclosed Above
 Sun Hoo Foo - Disclosed Above
 Kelly Kwok - Disclosed Above
 Ching Yan Lam - Disclosed Above
 Alice Lau, MD
 Owner, Total Care Pediatrics, PLLC

Affiliations

- Chinese American IPA, Inc. (May 2003 – Present)
- Total Care Pediatrics, PLLC (1987 – Present)

Pauline Lau, MD (NY, PA) Owner, Dr. Lau Medical Oncology PC

Affiliations

- Dr. Lau Medical Oncology PC (November 2002 – Present)
- Chinese American IPA, Inc. (May 2003 – Present) • Asian American Accountable Care Organization, LLC

Yick Moon Le, MD (NY, NC)

Owner, Chinatown Global Pediatrics

Affiliations

- Chinatown Global Pediatrics (February 2002 – Present)
- Chinese American IPA, Inc. (June 2010 – Present)

Wai Lap Leung - Disclosed Above

George Liu - Disclosed Above

Richard Ng - Disclosed Above

Bingjing Roberts, MD

Owner, Bingjing Roberts MD, PLLC Affiliations

- Binjing Roberts MD, PLLC (July 2009 – Present)
- Chinese American IPA, Inc (December 2007 – Present)

Paul Sheng - Disclosed above

Peggy Sheng - Disclosed Above

Oi Tseun Tung - Disclosed Above

Quong Wu, MD

Attending/Owner, Ivy Medical Services PC

Affiliations

- Ivy Medical Services PC (October 2005 – Present)
- Chinese American IPA, Inc (June 2005 – Present)

HuiFang Xiao, MD (NY, TX)

Owner, Union Women Care OBGYN, PLLC

Affiliations

- Union Women Care OBGYN, PLLC (April 2011 – Present)
- Chinese American IPA, Inc (June 2010 – Present)

Alan Yao, MD (NY, PA)

Owner/Medical Director, AE & LY Medical Associates PLLC

Affiliations

- AE & LY Medical Associates PLLC (April 2011 – Present)
- Chinese American IPA, Inc (June 2004 – Present)

Hong Ye, MD (NY, IL, NJ) Owner, Dr. Ye's Medical Office PC

Affiliations

- Dr. Ye's Medical Office PC (January 2008 – Present)
- Chinese American IPA, Inc (June 2008 – Present)

The board of .406 Ventures III GP, LLC is as follows:

Liam Donahue - Disclosed Above

Maria Cirino Co-Founder/Partner, Point 406 Ventures

The board of Point 406 Welbe Blocker, Inc. is as follows:

Liam Donahue - Disclosed Above

Payal A. Divakaran Partner, .406 Ventures Management LP

So-June Min Chief Financial Officer, .406 Ventures Management LP

The board of Longitude Capital Partners III, LLC is as follows:

Juliet P. Tammenoms-Bakker Co-Founder, Managing Director, Longitude Capital Management Co., LLC
Patrick G. Enright Co-Founder, Managing Director, Longitude Capital Management Co., LLC

The board of Longitude Venture Partners III, LP is as follows:

Juliet P. Tammenoms-Bakker - Disclosed Above

Patrick G. Enright - Disclosed Above

The board of Longitude WB Holdings, LLC is as follows:

Juliet P. Tammenoms-Bakker - Disclosed Above

Patrick G. Enright - Disclosed Above

Liam Donohue disclosed a Civil Action dated July 29, 2020. The action was settled following the dismissal of some of the Plaintiff's claims; the action was dismissed with prejudice.

Jonathan Lim disclosed that they serve, and have served, on the Board of many portfolio companies of their employer. During the course of normal business, these entities are regularly named in civil and administrative actions. None of these actions are personally related to Jonathan Lim.

Patrick Enright was named as a defendant in a shareholder lawsuit filed in September 2020 in the US District Court, EDNY. The complaint was amended and the directors, including Patrick Enright, were dismissed from the case.

The Office of Professional Medical Conduct assessed a fine of \$2,500 against Dr. Alan Yao for charges of professional misconduct related to a conviction of third-degree assault. The Office of the Professions of the State Education Department, the New York State Physician Profile, and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the remaining health professionals associated with this application.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

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.

Facility Compliance/Enforcement

The applicant is affiliated with several out-of-state health care facilities. For a full listing, please see Attachment B: Out-of-State Health Care Facilities. No enforcement action was reported by out-of-state regulatory authorities. For states which failed to respond to the request, the applicant submitted affidavits attesting to no known enforcement actions.

Need Review In accordance with 10 NYCRR 765-1.16(c)(3), this application is exempt from Public Need review as the agency will only be serving Program of All-Inclusive Care for the Elderly (PACE) patients.

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 financial feasibility of the agency. The working capital required for this project is approximately \$587,457. The required working capital will be funded by Welbe Health, LLC. The applicant has demonstrated the financial resources to support this project.

Workforce Review

The applicant's response regarding the recruitment and retainment of the workforce was adequately addressed. See Attachment A.

Attachments

OALTC

Attachment A



**Project # 222183-E
Elder Care Homecare Inc.**

Program: LHCSA
Purpose: Establishment

County: New York
Acknowledged: December 7, 2022

Executive Summary

Description

Elder Care Homecare, Inc., a business corporation, requests approval for a change in ownership under Article 36 of the Public Health Law. Elder Care Homecare, Inc was approved by the Public Health and Health Planning Council at its September 7, 2007, meeting. The agency was subsequently licensed under license number 1539L001.

Elder Care Homecare, Inc. currently serves Nassau, Bronx, Dutchess, Rockland, Orange, Putnam, Westchester, Suffolk, Ulster, and Sullivan counties from an office located at 700 White Plains Road, Suite 223, Scarsdale, NY 10583. The agency was approved for an additional practice location, under license number 1539L002, which serves Queens, Kings, and New York counties from an office located at 205 East 42nd Street, New York, NY 10017. There will be no changes to the counties served or services provided as a result of this project.

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).

Financial Summary

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

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

June 29, 2023

Program Analysis

Program Description

Elder Care Homecare, Inc., a business corporation, requests approval for a change in ownership under Article 36 of the Public Health Law.

Elder Care Homecare, Inc was approved by the Public Health and Health Planning Council at its September 7, 2007, meeting. The agency was subsequently licensed under license number 1539L001.

The applicant has authorized 20,000 shares of stock, which are currently owned as follows:

Loren Gilberg – 87.1 shares

David Gilberg – 9.9 shares

Eric Mayer – 2.5 shares

Nicole Gilberg – 0.5 shares

Upon project approval, the shares will be owned as follows:

Loren Gilberg – 20 shares

David Gilberg – 77 shares

Eric Mayer – 2.5 shares

Nicole Gilberg – 0.5 shares

The remaining 19,900 shares remain unissued.

Elder Care Homecare, Inc. currently serves Nassau, Bronx, Dutchess, Rockland, Orange, Putnam, Westchester, Suffolk, Ulster and Sullivan counties from an office located at 700 White Plains Road, Suite 223, Scarsdale, NY 10583.

The agency was approved for an additional practice location, under license number 1539L002, which serves Queens, Kings and New York counties from an office located at 205 East 42nd Street, New York, NY 10017. There will be no changes to the counties served or services provided as a result of this project.

Character and Competence Review The Board of Directors of Elder Care Homecare, Inc. is comprised of the following individuals: Loren Gilberg – President, Treasurer, and Secretary Previously Approved David Gilberg – Vice President, Elder Care Homecare, Inc. Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

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.

Workforce Summary The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. See Attachment A.

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

Attachment A



**Project # 222196-E
Horizons at Canandaigua, LLC**

Program: LHCSA
Purpose: Establishment

County: Ontario
Acknowledged: December 12, 2022

Executive Summary

Description

The Horizons at Canandaigua LLC, a limited liability company, requests approval for an Asset Purchase to obtain licensure as a Licensed Home Care Services Agency under Article 36 of the Public Health Law.

The Licensed Home Care Services Agency (LHCSA), to be known as The Horizons at Canandaigua LLC d/b/a Horizons, will be associated with the Assisted Living Program (ALP) to be operated by The Horizons at Canandaigua LLC d/b/a Horizons. The LHCSA and the ALP will have identical membership.

The applicant proposes to serve the residents of Ontario County from the address located at 3132 State Route 21 South, Canandaigua, NY, 14424.

The applicant proposes to provide the following health care services: Nursing, Home Health Aide, and Personal Care Aide.

OALTC Recommendation

Contingent 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).

Financial Summary

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Counsel

Approval contingent upon:

1. Submission of a copy of an executed Operating Agreement that is acceptable to The Department [CSL].
2. Submission of a copy of an Asset Purchase Agreement that is acceptable to The Department [CSL].

Council Action Date

June 29, 2023

Program Analysis

Program Description

The Horizons at Canandaigua LLC d/b/a Horizons, a limited liability company, requests approval for an Asset Purchase to obtain licensure as a Licensed Home Care Services Agency under Article 36 of the Public Health Law.

The Licensed Home Care Services Agency (LHCSA), to be known as The Horizons at Canandaigua LLC d/b/a Horizons, will be associated with the Assisted Living Program (ALP) to be operated by The Horizons at Canandaigua LLC d/b/a Horizons. The LHCSA and the ALP will have identical membership.

The applicant proposes to serve the residents of Ontario County from the address located at 3132 State Route 21 South, Canandaigua, NY, 14424.

The applicant proposes to provide the following health care services: Nursing, Home Health Aide, and Personal Care Aide.

Character and Competence Review

The Horizons at Canandaigua, LLC is comprised of the following individuals:

Elli Kaganoff - 100%

Manager, Horizons at Canandaigua, LLC
Marchand at Sharon Springs, LLC
Underwood Gardens Management, LLC

Extensive experience managing healthcare facilities, including long-term care facilities, as well as ACFs and ALPs. This includes many years of compliance, fiscal, and general operational oversight.

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

Facility Compliance/Enforcement

The Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the above-mentioned adult care facilities and reports as follows:

- Marchand Manor, LLC d/b/a Marchand Manor was fined \$783 pursuant to a Stipulation and Order for inspection findings on June 12, 2018, and September 6, 2018, for violations of Article 7 of the Social Services Law and 18 NYCRR Part 486.
- Marchand Manor, LLC d/b/a Marchand Manor was fined \$1,000 pursuant to a Stipulation and Order for inspection findings on January 28, 2021, for violations of Article 7 of the Social Services Law and 18 NYCRR Part 486.
- Marchand Manor, LLC d/b/a Marchand Manor was fined \$50 pursuant to a Stipulation and Order for inspection findings on March 9, 2021, for violations of Article 7 of the Social Services Law and 18 NYCRR Part 486.

Need Review

In accordance with 10 NYCRR 765-1.16(c)2, this application is exempt from Public Need review as the agency is only serving patients associated with the Assisted Living Program (ALP), 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.

Workforce Summary The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. See Attachment A.

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	Attachment A
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**Project # 222232-E
Good Samaritan Home Health Agency, Inc,**

Program: LHCSA
Purpose: Establishment

County: Erie
Acknowledged: December 23, 2022

Executive Summary

Description

Good Samaritan Home Health Agency, Inc., a for-profit corporation, seeks a proposed ownership transfer, where two approved owners will transfer their interest in the operations (thereby withdrawing from ownership) to three current owners who are not yet approved by the Public Health and Health Planning Council.

The applicant proposes to serve the residents of the following counties from an office located at 1775 Wehrle Drive, Suite 150, Buffalo, NY 14221: Allegany, Cattaraugus, Erie, Genesee, Monroe, Niagara, Orleans, and Wyoming.

The applicant proposes to provide the following health care services: Nursing, Homemaker, Home Health Aide, Housekeeper, and Personal Care.

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).

Financial Summary

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

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

June 29, 2023

Program Analysis

Program Description

Good Samaritan Home Health Agency, Inc., a for-profit corporation, seeks a proposed ownership transfer, where two approved owners will transfer their interest in the operator (thereby withdrawing from ownership) to three current owners who are not yet approved by the Public Health and Health Planning Council.

The applicant proposes to serve the residents of the following counties from an office located at 1775 Wehrle Drive, Suite 150, Buffalo, NY 14221: Allegany, Cattaraugus, Erie, Genesee, Monroe, Niagara, Orleans, Wyoming.

The applicant proposes to provide the following health care services: Nursing, Homemaker, Home Health Aide, Housekeeper, and Personal Care.

Character and Competence Review

The membership and shareholdings for Good Samaritan Home Health Agency, Inc. are as follows:

Sofia Arutunian – 33.4% Vice President and Director of Nursing, Good Samaritan Home Health Agency, Inc.

Affiliations

- Good Samaritan Home Health Agency, Inc. (LHCSA) (8/1/2021-present)

Victoria Shvartsberg – 33.3% Member/Shareholder, Good Samaritan Home Health Agency, Inc.

Affiliations

- Good Samaritan Home Health Agency, Inc. (LHCSA) (8/1/2021-present)

Angelina Melkumyan – 33.3% Vice President, Good Samaritan Home Health Agency, Inc.

Affiliations

- Good Samaritan Home Health Agency, Inc. (LHCSA) (8/1/2021-present)

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

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.

Workforce Summary The applicant's response regarding the recruitment and retention of the workforce was adequately addressed. See Attachment A.

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

Attachment A



**Project # 231001-C
NYU Langone Hospital-Long Island**

Program: Hospital
Purpose: Construction

County: Nassau
Acknowledged: February 7, 2023

Executive Summary

Description

NYU Langone Hospital-Long Island (NYULH), a 591-bed not-for-profit hospital located at 259 First Street, Mineola (Nassau County), requests approval to create a three (3) bed Bone Marrow subunit as part of the existing Oncology Medical Surgical Unit on the first floor of the Hoag Pavilion. It will include (3) three private BMT patient rooms, support spaces, one (1) treatment room to support two (2) patient bays with recliner chairs, and a nurse's station.

The applicant's goal is to expand the services of the NYULH Transplant and Cellular Therapy Center (TCTC) Program by creating a dedicated Transplant and Cellular Therapy inpatient unit. This new sub-unit will enable patients with immediate needs to bypass the Emergency Room to be seen in a treatment room that is available 24/7 for triage and assessment. Building this unit will drastically reduce travel for patients who currently have to drive into Manhattan and allow them to remain with their primary oncologist. In addition, the inpatient unit will support the provision of additional transplants, including allogenic and CAR-T.

OPCHSM Recommendation

Contingent approval

Need Summary

The applicant projects 5 bone marrow transplant patients in Year 1 and 15 patients in Year 3.

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 costs of \$3,429,234 will be met with accumulated funds from NYULH.

	<u>Year One</u>	<u>Year Three</u>
	<u>2023</u>	<u>2025</u>
Budget:		
Revenues	\$990,561	\$5,630,900
Expenses	<u>\$626,770</u>	<u>\$3,491,447</u>
Net Income/(Loss)	\$363,891	\$2,139,453

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 Design Development and State Hospital Code (SHC) Drawings, as described in NYSDOH BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 2.18 LSC Chapter 18 Healthcare Facilities Public Use, for review and approval. [DAS]

Approval conditional upon:

1. This project must be completed by **July 1, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2024**, and construction must be completed by **May 1, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a) if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

June 29, 2023

Need and Program Analysis

Background and Analysis

NYU Langone Hospital-Long Island is in Nassau County, with a service area covering Nassau, Suffolk, and Queens Counties. The table below shows the bed changes associated with this project.

Certified Beds and Bed Changes Anticipated, Source: HFIS 2023			
Bed Type	Bed Count	Bed Change	Beds Upon Completion
Coronary Care	20		20
Intensive Care	36		36
Maternity	63		63
Medical / Surgical	406	-3	403
Neonatal Continuing Care	7		7
Neonatal Intensive Care	15		15
Neonatal Intermediate Care	14		14
Pediatric	22		22
Pediatric ICU	8		8
Bone Marrow Transplant	0	3	3
Total	591		591

As seen in the table below, the conversion of three medical/surgical beds to BMT will not significantly affect the occupancy rates.

Historical Occupancy Rates for Medical/Surgical Beds, Source: Applicant								
	2017	2018	2019	2020	2021	2022*	2023**	2026**
Med/Surg Patient Days	112,823	112,621	113,297	102,691	114,356	111,393	111,393	111,393
Beds	415	415	415	415	414	406	403	403
Occupancy Rate	74.48%	74.35%	74.80%	67.79%	75.64%	75.17%	77.74%	77.74%
* 2022 represents a change to nine Med/Surg Beds that were converted to NICU Beds in 2021								
** Projected data								

According to the applicant, the Bone Marrow Transplant unit is needed to accommodate the growth of the Transplant and Cellular Therapy Center (TCTC) program at NYU Langone Health. Currently, NYU Langone has a dedicated outpatient space offering phlebotomy, outpatient care, and infusion services; however, the program is limited by the lack of an inpatient unit. Currently, only outpatient autologous transplants can be provided.

Patients requiring inpatient care for BMT are currently transferred to NYULH-Manhattan. The enhancement of services will allow patients on Long Island to remain on Long Island and continue to be treated by their primary oncologist. The inpatient unit will support additional transplants, including allogeneic and CAR-T transplants. Also, with this project, patients with immediate needs will be able to bypass the Emergency Room to be seen in a treatment room available 24/7 for quick triage and assessment.

BMT Patients Transferred from NYULH-Long Island to NYULH-Manhattan Source: Applicant			
	2019	2020	2021
Referred Autologous Transplant Patients	13	19	15
Referred Allogeneic Transplant Patients	7	9	17
Total	20	28	32

The applicant projects 5 BMTs in Year One and 15 BMTs in Year Three.

There are three nearby hospitals to the applicant performing BMT services.

Name	BMT Beds
Stony Brook University Hospital	10
North Shore University Hospital	4
Long Island Jewish Medical Center	4

According to US Census population estimates data in 2021, below are the following race and ethnicity demographics for the three counties within the service area:

	Queens County	Nassau County	Suffolk County
Black or African American	20.7%	13.1%	9.0%
Hispanic or Latino	28.1%	17.6%	20.7%

According to Data USA, in 2020, the population in Queens, Nassau, and Suffolk Counties had health coverage as follows:

	Queens County	Nassau County	Suffolk County
Health Coverage %	89.5%	95.9%	95.82%
Employer Plans	43.2%	59.5%	58.3%
Medicaid	25.9%	10.1%	11.6%
Medicare	9.8%	13.5%	13.0%
Non-Group Plans	10.3%	12.6%	12.4%
Military or VA	0.302%	0.238%	0.501%

Applicant Projected Payor Mix for Inpatient Services		
Payor	Year One	Year Three
Commercial	40.00%	33.33%
Medicare	20.00%	33.33%
Medicaid	40.00%	33.33%

Prevention Agenda

A 2019 needs assessment in Nassau County identified that timely screening for colon cancer is lower in Hempstead than in Nassau County. In addition, Hempstead residents suffer disproportionately from chronic disease and mental distress as compared with the rest of Nassau County, so this area is targeted.

Several local community partners have been engaged in NYU Langone Hospitals' community agenda. The proposed project would improve access for their patients that require inpatient care for bone marrow transplants and follow-up care. However, it does not explicitly advance the local Prevention Agenda priorities that were identified in the most recently completed Community Health Improvement/Community Service Plan (Prevent Chronic Diseases, Promote a Healthy and Safe Environment, and Promote Healthy Women, Infants, and Children). The application identified multiple data sources the hospital is using to track progress in achieving local Prevention Agenda goals.

For the period beginning September 1, 2020, and ending August 31, 2021, net expenses across all the Community Benefit Categories totaled \$1,025,820,727, or 16.1% of total operating expenses. Community Health Improvement Services and Community Benefit Operations Expense was \$32,245,843 or 0.51% of total operating expenses.

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, NYU Langone will convert 3 medical/surgical beds to 3 BMT beds to accommodate local inpatient volume.

Financial Analysis

Total Project Cost and Financing

The total project costs for renovations and movable equipment are estimated at \$3,429,234 and detailed as follows:

Renovation & Demolition	\$1,800,000
Temporary Utilities	15,320
Asbestos Abatement or Removal	126,298
Design Contingency	200,000
Construction Contingency	200,000
Architect/Engineering Fees	474,405
Other Fees	13,796
Movable Equipment	357,668
Telecommunications	221,000
Application Fee	2,000
Additional Processing Fee	<u>18,747</u>
Total Project Cost	<u>\$3,429,234</u>

NYULH will provide the equity to fund this project in its entirety. As shown in BFA Attachments A and B, NYULH has sufficient resources to meet the equity requirement.

Operating Budget

The applicant has submitted an operating budget, in 2023 dollars, for Years One and Three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2023</u>		<u>2025</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Outpatient Rev:				
Commercial MC	\$1,377	\$13,770	\$1,433	\$22,922
Medicare FFS	\$445	\$1,336	\$463	\$2,779
Medicare MC	\$1,790	\$8,949	\$1,862	\$18,621
Medicaid MC	\$2,403	<u>\$4,806</u>	\$2,500	<u>\$7,501</u>
Total Revenue	-	\$28,861		\$51,823
Inpatient Rev.	Per Proc.		Per Proc.	
Commercial MC	\$270,056	\$540,112	\$450,646	\$2,253,230
Medicare FFS	\$125,005	\$125,005	\$454,979	\$2,274,893
Medicaid MC	\$148,292	\$296,583	\$210,191	\$1,050,954
Inpt. Income		<u>\$961,700</u>		<u>\$5,579,077</u>
Total Income		\$990,561		\$5,630,900
Combined Expenses:				
Operating	\$85,475	\$427,375	\$206,190.00	\$3,092,857
Capital	<u>\$39,859</u>	<u>\$199,295</u>	<u>\$26,573.00</u>	<u>\$398,590</u>
Total	\$125,334	\$626,770	\$232,763.00	\$3,491,447
Net Income / (Loss)		<u>\$363,791</u>		<u>\$2,139,453</u>
Total Visits	20		35	
Total Procedures	5		15	
Cost Per Procedure	\$124,967		\$232,549	

The following is noted with respect to the submitted budget:

- Payor rates are based on current reimbursement rates received for the same services provided at the NYU Manhattan Campus Center.
- Expenses are based on medical and surgical supplies, and due to higher volume, more will be needed.
- Increased costs per procedure are projected in Year Three due to the acuity of care required for these patients. More resources will be required to treat the more severe cases.
- Occupancy for this service line is based on NYU's current experience.

Utilization by payor source for Year One and Year Three is as follows:

Payor:	Years One	Year Three
	2023	2025
<u>Outpatient:</u>		
Commercial MC	50.00%	45.71%
Medicare FFS	25.00%	17.14%
Medicare MC	10.00%	28.57%
Medicaid MC	<u>15.00%</u>	<u>8.57%</u>
Total	100.00%	100.00%
<u>Inpatient:</u>		
Commercial MC	40.00%	33.33%
Medicare FFS	20.00%	33.33%
Medicaid MC	<u>40.00%</u>	<u>33.34%</u>
Total	100%	100%

The applicant indicated they are committed to serving all persons in need without regard to the patient's ability to pay or the source of payment. The hospital will develop, maintain, and update a sliding fee scale as well as policies and procedures for serving the uninsured and persons without the ability to pay.

Capability and Feasibility

The total project cost of \$3,429,234 will be met with equity from accumulated funds from NYULH. The working capital requirements are estimated at \$581,908, based on two months of third-year expenses, and will be funded through equity from NYULH. The submitted budget projects a net income of \$363,891 and \$2,139,453 during years one and three of operations. The budget appears reasonable.

BFA Attachment A presents NYULH's 2021 and 2022 certified financial statements showing the entity maintained positive working capital, a positive net equity position for both years and a net operating income of \$594,650,000 and \$619,176,000, respectively. BFA Attachment B presents NYULH's November 30, 2022; internal financial statement shows the entity maintained a positive working capital, positive net equity position, and a net operating income of \$173,445,000.

Conclusion

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

Attachments

BFA Attachment A	2021-2022 Audited Financial Statements for the year ended 8.31.21
BFA Attachment B	November Internal Fiscal 2022 Financial Statement



**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 1,898 in Year Three with 7.90% Medicaid and 1.69% Charity Care in the third year. The Center is current with SPARCS reporting through February 2023.

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

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

Budget:	<u>Current</u> 2021	<u>Year One</u> 2024	<u>Year Three</u> 2026
Revenues	\$3,660,337	\$7,373,051	\$7,997,465
Expenses	<u>5,056,034</u>	<u>6,056,152</u>	<u>6,203,532</u>
Net Income	(\$1,395,697)	\$1,316,899	\$1,793,933

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 and Program Analysis

Background and Analysis

Precision SC, LLC d/b/a PrecisionCare Surgery Center, an existing Article 28 single specialty Freestanding Ambulatory Surgery Center, located at 28 Research Way in East Setauket, specializing in Orthopedics, including spine procedure, seeks approval to certify a second single specialty Pain Management. The pain management procedures will be performed in one of the existing ORs. There will be no construction needed to implement this project. Staffing at the Center is expected to increase by 1.4 FTEs to 22.40 FTEs to implement the additional service.

The center was originally 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 2022 was 1,525,465, according to the latest US Census data, and is projected to decrease to 1,492,157 by 2028. Per the applicant, 84.2% of service area residents in 2020 were White, 8.8% were African American, and 4.2% were Asian.

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 bringing 550 pain management cases to the Center in Year One and 583 cases in Year Three. Approximately 95% of these cases are currently being performed at the North Shore SurgiCenter.

The applicant projects a total of 1,765 procedures in Year One and 1,898 in Year Three based on the current practices of participating surgeons. The table below shows the actual payor source utilization for the current year and the projected payor source utilization for years one and three.

Payor	Current		Year 1		Year 3	
	Volume	%	Volume	%	Volume	%
Commercial FFS	179	28.46%	377	21.36%	408	21.50%
Commercial MC	158	25.12%	326	18.47%	352	18.55%
Medicare FFS	130	20.67%	294	16.66%	318	16.75%
Medicare MC	0	0.00%	122	6.91%	131	6.90%
Medicaid FFS	0	0.00%	3	0.17%	3	0.16%
Medicaid MC	22	3.50%	139	7.88%	147	7.74%
Private Pay	1	0.16%	46	2.61%	49	2.58%
Charity Care	1	0.16%	29	1.64%	32	1.69%
Other	138	21.94%	429	24.30%	458	24.13%

According to the applicant, the center's Medicaid utilization is low due to the time it has taken to get enrolled as a Medicaid provider. The incremental ramp-up for Medicaid visits is 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 that population.

The center has Medicaid Managed Care contracts with 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.

The center is current with SPARCS reporting through February 2023.

Atlantic Surgery Center, a single-specialty ASC providing gastroenterology procedures, also recently requested 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

Compliance with Applicable Codes, Rules, and Regulations

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

Conclusion

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

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.

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per PD</u>	<u>Total</u>	<u>Per PD</u>	<u>Total</u>	<u>Per PD</u>	<u>Total</u>
<u>Revenues:</u>						
Commercial FFS	\$7,451	\$1,333,786	\$5,392	\$2,032,963	5,453	\$2,224,761
Commercial MC	\$7,672	\$1,212,123	\$5,721	\$1,864,890	5,742	\$2,021,277
Medicare FFS	\$2,384	\$309,875	\$1,892	\$556,313	1,913	\$608,319
Medicare MC			\$1,587	\$193,620	1,630	\$213,590
Medicaid FFS			\$4,755	\$14,264	4,755	\$14,264
Medicaid MC	\$5,632	\$123,899	\$6,238	\$867,131	6,232	\$916,175
Private Pay	\$8,939	\$8,939	\$5,610	\$258,050	5,636	\$276,172
All Other	\$4,868	\$671,715	\$3,697	<u>\$1,585,820</u>	3,762	<u>\$1,722,907</u>
Total Revenues		\$3,660,337		\$7,373,051		\$7,997,465
<u>Expenses:</u>						
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>	<u>\$1,477,905</u>
Total Expenses	\$8,038	5,056,034	\$3,431	\$6,056,152	\$4,724,580	\$6,203,532
Net Income		(\$1,395,697)		\$1,316,899		\$1,793,933
Procedures		629		1,765		1,898

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 as well as 1.4 FTEs.
- 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 the 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>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Commercial FFS	28.46%	21.36%	21.50%
Commercial MC	25.12%	18.47%	18.55%
Medicare FFS	20.67%	16.66%	16.75%
Medicare MC	0.00%	6.91%	6.90%
Medicaid FFS	0.00%	0.17%	0.16%
Medicaid MC	3.50%	7.88%	7.74%
Private Pay	0.16%	2.61%	2.58%
Charity Care	0.16%	1.64%	1.69%
Other	<u>21.94%</u>	<u>24.30%</u>	<u>24.13%</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 is the December 31, 2022, internal financial statements of PrecisionCare Surgery Center, and shows that the facility has sufficient funds in its operations to fund 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). The applicant has indicated that the losses in 2021 were due to a slow ramp-up of utilization upon facility approval to begin services in April 2021 during COVID-19. 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.

The submitted budget projects a net income of \$1,316,899 and \$1,793,933 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

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

Attachments

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



**Project # 221200-E
Suffolk Surgery Center, LLC**

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment **Acknowledged:** June 29, 2022

Executive Summary

Description

Suffolk Surgery Center, LLC (the Center), an existing Article 28 diagnostic and treatment center (D&TC) certified as a multi-specialty freestanding ambulatory surgical center (FASC) located at 1500 William Floyd Parkway, Shirley (Suffolk County), New York, is seeking approval to transfer 68% membership interest from North Shore-LIJ Multi-specialty Ventures, LLC to Sight Medical Doctors, PLLC.

The current membership structure of Sight Medical Doctors, PLLC is Vance Vanier, M.D. (75.0%); Jeffrey Martin, M.D. (12.5%); and John G. Passarelli, M.D. (12.5%). These three (3) individuals are New York State-licensed physicians who have experience operating a variety of healthcare facilities, including ambulatory surgery centers, mental health, and substance use facilities. Upon approval of this application, the Center will continue to be owned and operated by Suffolk Surgery Center, LLC. However, North Shore-LIJ Multi-specialty Ventures, LLC will be withdrawing, and Sight Medical Doctors, PLLC, will be added to the membership structure.

Michele Guevarra-Pena , M.D.	3.00%	3.00%
Lawrence Buono, M.D.	3.00%	3.00%
Sight Medical Doctors, PLLC	0.00%	68.00%
Total	100.0%	100.0%

Dhiren Mehta, M.D., currently the Center's Medical Director, will continue to serve in this role. The existing lease agreement will remain in place, as will the existing transfer agreement with South Shore University Hospital.

OPCHSM Recommendation

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

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).

<u>Members</u>	<u>Current</u>	<u>Proposed</u>
North Shore - LIJ Multi-specialty Ventures, LLC	68.00%	0%
Timothy Groth, M.D.	4.00%	4.00%
Brian McGuinness, M.D.	4.00%	4.00%
Pamela Weber, M.D.	4.00%	4.00%
Dhiren Mehta, M.D.	4.00%	4.00%
Masoom Qadeer, M.D.	2.00%	2.00%
Aaron Avni, M.D.	4.00%	4.00%
Paul Choinski, M.D.	4.00%	4.00%

Financial Summary

Sight Medical Doctors, PLLC will acquire 68% membership interest in Suffolk Surgery Center, LLC for \$2,720,000, funded by existing cash resources of Sight Medical Doctors, PLLC. As there will be no changes in services, a budget was not reviewed as part of this application.

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 three years from the date of its issuance, contingent upon:

1. Submission of a photocopy of an amended and executed Articles of Organization for Sight Medical Doctors, PLLC, acceptable to the Department. [CSL]
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. 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 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]
3. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

June 29, 2023

Program Analysis

Character and Competence

The proposed membership Suffolk Surgery Center, LLC is provided in the chart below.

Member Name/Title	Current Ownership	Proposed Ownership
North Shore-LIJ Multi-specialty Ventures	68.00%	0.00%
Timothy Growth, M.D.	4.00%	4.00%
Brian McGuinness, M.D.	4.00%	4.00%
Pamela Weber, M.D.	4.00%	4.00%
Dhiren Mehta, M.D.	4.00%	4.00%
Masoom Qadeer, M.D.	2.00%	2.00%
Aaron Avni, M.D.	4.00%	4.00%
Paul Choinski, M.D.	4.00%	4.00%
Michelle Guevarra-Pena, M.D.	3.00%	3.00%
Lawrence Buono, M.D.	3.00%	3.00%
Sight Medical Doctors Vance Vanier, M.D. (51.00%) Jeffrey Martin, M.D. (8.50%) John Passarelli, M.D. (8.50%)	0.00%	68.00%
Total	100%	100%

*** Members Subject to Character and Competence ***

Suffolk Surgery Center, in accordance with the terms of the Center's Operating Agreement, proposes to appoint an outside manager to serve on the Center's Board of Managers.

John Lujan

Board of Managers

Johnathan Lujan is the proposed Outside Manager of the Board of Managers of Sight Medical Doctors. He is the Chief Medical Officer of Sight Growth Partners for three (3) years. He has leadership and profit and loss responsibility. He is responsible for 150 employees. He helped drive double-digit organic and acquisition growth, increase operating efficiency, and improve processes to provide services and administrative support to drive margin improvement, build team, and enhance culture. He was the Vice President and General Manager of Lifeline Vascular Care of DaVita for over two (2) years. He was responsible for Lifeline's 600 employees and 70 vascular centers. He helped establish a new culture that aligns with DaVita's core values, restructured the company to reduce management layers, aligned reporting structure, and improved operating margins back to profitability.

Dr. Jeffrey Martin is the Managing Partner, CEO, CO-Founder, and President of SightMD for over 24 years. He received his medical degree from SUNY Stony Brook. He completed his residency in Ophthalmology at Nassau University Medical Center. He is board certified in Ophthalmology. He serves as the head of the Clinical Governance Board of SightMD. He also serves on the Corporate Board. He serves on the Clinical Advisory Board of Cold Springs Harbor Lab. Dr. Martin discloses ownership interest in the following healthcare facility:

Long Island ASC

1986-2018

Dr. John Passarelli is an Ophthalmologist. He is the President and Founder of Sight Medical Doctors, PLLC, for over one (1) year. He is also the President and Surgical Director at Long Island Ambulatory Surgery Center for over 18 years. He is the President and Medical Director of Long Island Eye Surgical Care, PC, for 30 years. He is the Owner and Founder of Island Refractive Eye Care, LLC for 19 years. He is the Founder and Managing Partner of Long Island Vision Management, LLC for over one (1) year. He is the Founder and Principal Owner of Suffolk Surgery Center, LLC for 15 years. He is the Managing Partner of Island Ophthalmology, LLC and Surgery Supply Purchasing Company of Long Island, LLC for six (6) years. He is the President of Am Care Realty, LLC for 24 years. He has worked for Allegria Realty, LLC for seven (7) years. He has worked for Anello Investors, LTD, for 15 years. He received his medical

degree from Autonomous University of Guadalajara. He completed his residency in Ophthalmology at St. Clare's Hospital and St. Vincent's Hospital. He is board certified in Ophthalmology. Dr. Passarelli discloses ownership interest in the following healthcare facilities:

Long Island ASC
Suffolk Surgery Center

1986-2018
2000-01/2022

Dr. Vance Vanier is the Co-Founder and Managing Partner of Chicago Pacific Founders, a strategic healthcare investment fund focused exclusively on healthcare services, for approximately seven years. He is an Emergency Medicine Physician at Stanford Medical Center for approximately 18 years. He was the President of Verinata Health Inc. for approximately three (3) years. He was responsible for scaling global revenue, marketing, health plan contracting, and clinical affairs. He served as President and CEO of Navigenics. He was a Partner in Mohr Daidown Ventures, where he invested in molecular diagnostics and online health businesses. He was responsible for oversight of commercial organizations. Dr. Vanier received his medical degree from Johns Hopkins School of Medicine. He completed his residency in Emergency Medicine at Alameda County Medical Center. He is board certified in Emergency Medicine. Dr. Vanier disclosed ownership interests in the various healthcare facilities presented below:

Facility Name	State	Facility Type	Period of Ownership
CPF Recovery Ways	UT	RTF/MH	2014-Present
CPF Recovery Ways, Bunswick Place	UT	RTF/MH	2014-Present
CPF Recovery Ways Denali	UT	RTF/MH	2014-Present
CPF Recovery Ways Copper Hills	UT	RTF/MH	2014-Present
CPF Recovery Ways Chatham Place	UT	RTF/MH	2014-Present
The Atrium of Belleville	IL	IN. Living	2014-Present
The Willows of Easley	SC	In/Ass. Living	2018-Present
The Landons at Lake Highlands	TX	IN. Living	2018-Present
CPF Senior Living Collier Park	TX	In/Ass. Living	2018-Present
CPF Camillia	FL	In/Ass. Living	2017-Present
CPF Northgate Park	OH	Asst. Living	2017-Present
CPF Senior Living Acacia Park	NV	In/Ass. Living	2017-Present
CPF Senior Living Inspirations	NV	Asst. Living	2016-Present
CPF Senior Living Segwick	KS	In/Ass. Living	2015-Present
Town Village of Vestavia Hills	AL	In/Ass. Living	2016-Present
Town Village of Audubon Park	TN	In/Ass. Living	2016-Present
Town Village of Tulsa	OK	In/Ass. Living	2016-Present
Town Village of Sterling Heights	MI	In/Ass. Living	2016-Present
CPF Senior Living Dirigo Pines	ME	In/Ass. Living	2016-Present
CPF Senior Living The Highlands	ME	In/Ass. Living	2015-Present
CPF Senior Living Vintage Park at Atchson	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Baldwin City	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Eureka	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Gardner	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Hiawatha	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Holton	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Lenexa	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Louisburg	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Osawatomie	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Osage City	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Ottawa	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Paola	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Stanley	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Tonganoxie	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Wamego	KS	Asst. Living	2015-Present
CPF Senior Living Vintage Park at Waterfront	KS	Asst. Living	2015-Present
Progressive Laser Surgical Institute	PA	ASC	2020-Present
Progressive Surgical Institute	PA	ASC	2020-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.

- *Dr. Passarelli disclosed two medical malpractice suits. The first malpractice suit was filed on September 5, 2014, in the Supreme Court of Suffolk County by the patient. She alleged the services rendered related to cataract surgery were careless, unskillful, negligent, and not in accordance with accepted standards of care, leading to pain, agony, injury, suffering, hospitalization, mental anguish, and emotional distress. Dr. Passarelli was not the surgeon who performed the surgery but was involved in the patient's post-operative care. In July 2017, the patient's attorney withdrew from the case, and since then, the patient has been unable to engage replacement counsel. The patient has been given multiple extensions and has now been given until September 10, 2018, to find a new attorney, or the case will be dismissed. The case was discontinued with prejudice.*
- *On February 11, 2022, the patient and his wife filed a malpractice suit in the New York Supreme Court. The plaintiffs alleged the provider performed a pans plana vitrectomy (removing the jelly-like substance of the eye) of both the left and right eye. They allege Dr. Passarelli failed to treat and diagnose polypoidal choroidal vasculopathy. Dr. Passarelli was involved in the patient's cataract surgical care. The case has been accepted for defense by Dr. Passarelli's professional liability carrier, and Dr. Passarelli intends to deny all allegations.*

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.

Out-of-State Facilities:

Florida:

- *CFP Senior Living-Camellia LLC is named the defendant in two civil actions filed in the Duval County Circuit Court. Specifically, the complaints allege that each respective plaintiff incurred injuries while residents of the facilities and under the care of the facility's agents and employees. Both actions allege common law negligence theories of liability. Both cases have been settled and are in the process of finalizing payment and paperwork.*

Maine:

- *Cadigan Lodge received citations following a survey that ended on April 14, 2016. Specifically, the facility failed to ensure safe and acceptable methods of administering medications, failing to ensure a patient got received the correct medication dose. The facility also failed to ensure that the patient's medication was not given to other patients, including controlled medication. The facility failed to ensure required record-keeping for controlled medications.*
- *Dirigo Pines Inn received citations following a survey that ended on November 17, 2020. Specifically, the facility failed to keep the medication in the locked box physically separate. The facility failed to assess the patient's ability to self-administer medications. The facility failed to store medications in a locked cabinet and stored active and discontinued medications together, and labeled them legibly. The facility also failed to discard or destroy expired medication for multiple residents. The facility failed to complete the personal property inventories for multiple residents.*
- *Dirigo Pines Inn received citations following a survey completed on December 16, 2021. Specifically, Adult Protective Services (APS) were investigating staff for the neglect of residents and reported a finding of substantiated neglect of one patient. APS then reported their findings to the Maine Department of Health for investigation. APS closed their case without further recommendations. The Maine Department of Health investigated and found that the patient was hospitalized due to malnourishment and bed sores. Another resident was found to be neglected by being left in their geri-chair and not changed for up to two weeks. The patients were left with their*

food instead of being helped to eat. Staff reported patients were not showered for months; there were not enough staff to do any personal care; therefore, it was not done; staff did not help the resident walk and would change the patient in the living area.

- *Dirigo Pines Inn received a citation following a survey that ended on August 2, 2019. Specifically, the facility failed to use the mandatory Background Check Center for assisted living providers.*
- *Dirigo Pines Inn received citations following a survey that ended on October 27, 2016. Specifically, the facility failed to keep medications in their original packaging, stored separately, and with physical separation for the storage of each resident's medications. The medications were being stored loosely in the same medication storage bins together. The medications were improperly labeled as being soiled, damaged, incorrect, illegible, or having makeshift labels. The listing of personal property of significant value was not completed and included in the record. A Registered Nurse did review the medication records, medication administration practices, and therapeutic diets, recommended staff training, and undertook other reviews and other recommendations as necessary.*

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

Lease Agreement

The applicant has submitted an executed lease agreement for the existing site, as summarized below. There is common ownership between AMCARE REALTY, LLC and Suffolk Surgery Center, LLC.

Date:	June 20, 1998
Premises:	6,490 sq. ft. located on the first floor in the building located at 1500 William Floyd Parkway, Shirley, New York.
Landlord:	AMCARE REALTY, LLC
Tenant:	Suffolk Surgery Center, LLC
Term:	Through August 31, 2025, with options to renew for 60 months
Rent:	240,750 in 2014-2015, increasing 3.0% per annum to \$323,547.87 in 2025 Annual rent raises to \$333,254.30 following the 121 st month following the effective date of the second amendment to the lease. The annual base rent on each anniversary shall increase by 3% per annum. Annual rent raises to \$386,333.08 following the 181 st month following the effective date of the second Amendment to the lease. The annual base rent on each anniversary shall increase by 3% per annum.

Membership Interest Purchase Agreement

Contract Date:	July 30, 2021
Seller:	North Shore-LIJ Multi-specialty Ventures, LLC
Purchaser:	Sight Medical Doctors, PLLC
Asset Acquired:	68% Membership Interest in Suffolk Surgery Center, LLC
Purchase Price:	\$2,720,000, which will be funded through existing cash resources of Sight Medical Doctors, PLLC.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the transfer of 68% membership interest in Suffolk Surgery Center, LLC from North Shore-LIJ Multi-specialty Ventures, LLC to Sight Medical Doctors, PLLC, is \$2,720,000 and will be funded by existing cash resources of Sight Medical Doctors, PLLC. BFA Attachment B shows the current and proposed membership upon approval of this application.

As shown in BFA Attachment C, Suffolk Surgery Center, LLC had an average positive working capital position and an average positive net asset position in 2019 and 2020. The entity achieved a net income from operations of \$620,000 and \$86,000 in 2019 and 2020, respectively. As shown in attachment D, the facility achieved a net income of \$450,000 in 2021, indicating a recovery from the negative impacts of COVID-19. Attachment E reflects the Internal Financial Statements for December 2022, indicating positive working capital, positive net assets, and an operating loss during this period. The applicant states that the reason for the operating loss is a decline in procedure volume experienced by the Center due to a Covid-19 resurgence in January and February of 2022.

Conclusion

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

Attachments

BFA Attachment A	Sight Medical Doctors PLLC
BFA Attachment B	Current and Proposed Membership Structure
BFA Attachment C	Suffolk Surgery Center 2020 Certified Financial Statement and 2021 Internal Financial Statements
BFA Attachment D	Suffolk Surgery Center P&L
BFA Attachment E	Suffolk Surgery Center December 2022 Internal Financial Statement



**Project # 222254-B
Greater Binghamton Surgery Center**

Program: Diagnostic and Treatment Center **County:** Broome
Purpose: Establishment and Construction **Acknowledged:** December 29, 2022

Executive Summary

Description

Binghamton ASC, LLC d/b/a Greater Binghamton Eye Surgery Center, an existing Article 28 diagnostic and treatment center certified as a single-specialty freestanding ambulatory surgical center (FASC) specializing in ophthalmology procedures, requests approval to transfer a 65% membership interest in the Center to New York Holdco, LLC and to convert the single-specialty FASC to a multi-specialty FASC. Upon approval of this application, the Center will do business as Greater Binghamton Surgery Center. The Center is located at 530 Columbia Drive, Johnson City, New York 13790.

The applicant is also requesting certification of otolaryngology services. Letters of referral from three (3) physicians support the addition of this service.

The ownership interests of Binghamton ASC, LLC before and after approval are as follows:

Class A - Physician Member	Current	Proposed
Daniel Sambursky, MD	100%	35%
Class B Members - New York Holdco, LLC	0%	65%
Jeffrey Andrews (35%)		
Binghamton Health Corp. (65%)		
Total Class A and B Ownership	100%	100%

Daniel Sambursky, MD, the sole member, will transfer 65% of his membership interest to New York Holdco, LLC. The ownership of New York Holdco, LLC includes one (1) individual member,

Mr. Jeffrey Andrews (35%), and one corporate member, Binghamton Health Corporation (65%), an existing, not-for-profit corporation whose sole passive member is Our Lady of Lourdes Memorial Hospital, Inc. Daniel Sambursky, M.D will continue as the Medical Director of Greater Binghamton Eye Surgery 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 2,264 procedures in Year One and 2,334 in Year Three with 10.97% Medicaid and 2.01% Charity Care in 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

The purchase price for the proposed membership interest is \$6,175,000 and will be met with equity from the new proposed members. The total project cost of \$577,477 will be met with \$57,748 in equity from the proposed members and a bank loan of \$519,729 at an interest rate of 7.13% for a five-year term.

Budget:	<u>Year One</u> <u>2023</u>	<u>Year Three</u> <u>2025</u>
Revenues	\$3,802,434	\$4,189,795
Expenses	<u>\$4,058,359</u>	<u>\$4,117,603</u>
Net Income	(\$255,925)	\$72,193

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 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]
3. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative services agreement that is acceptable to the Department of Health. [BFA]
5. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
6. Submission of a signed/executed copy of an Amended & Restated Operating Agreement that is acceptable to The Department. [CSL]

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 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

June 29, 2023

Need Analysis

Background and Analysis

The center was approved under CON 191137 and began operations in May 2021, providing ophthalmology surgery services in two operating rooms and one procedure room. Greater Binghamton Eye Surgery Center is currently the only ASC operating in Broome County. The center believes that becoming a multi-specialty ASC will enable it to enhance the center's ability to provide care to the underserved residents of Broome County.

The primary service area is Broome County. The population of Broome County in 2022 was estimated to be 197,117 according to the latest US Census data population 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:

Employer Plans	45.3%
Medicaid	22.5%
Medicare	14.8%
Non-Group Plans	12.5%
Military or VA	1.03%

Another ASC, Southern Tier Surgery Center, was recently approved in Broome County to provide orthopedics and pain management surgery services. It will be approximately one mile and four minutes away from Greater Binghamton Eye Surgery Center.

The applicant projects 2,264 procedures in Year One and 2,334 in Year Three, with approximately 573 of these being Otolaryngology procedures. These projections are based on the current practices of participating surgeons. The proposed otolaryngology procedures are currently being performed in a hospital setting. The table below shows the actual utilization by payor source for the current year and projected for years one and three.

Payor	Current Year		Year One		Year Three	
	Volume	%	Volume	%	Volume	%
Comm Ins- FFS	440	25.42%	620	27.39%	639	27.38%
Comm Ins- MC	120	6.93%	187	8.26%	193	8.27%
Medicare FFS	506	29.23%	546	24.12%	562	24.08%
Medicare Mc	540	31.20%	590	26.06%	608	26.05%
Medicaid MC	100	5.78%	249	11.00%	256	10.97%
Private Pay	22	1.27%	28	1.24%	29	1.24%
Charity Care	3	0.17%	44	1.94%	47	2.01%

The center has Medicaid Managed Care contracts with the following: Aetna Health, CDPHP, United Healthcare of NY, MVP, and will soon participate with WellCare and Fidelis Care. The center will work collaboratively with local Federally Qualified Health Centers such as Cornerstone Family Healthcare, which has two locations in Binghamton, and other community-based facilities to provide service to the under-insured in their service area.

The center is current with its SPARCS reporting through April 2023. The applicant is committed to serving all persons in need without regard to the ability to pay or the source of payment.

Conclusion

Approval of this project will enhance access to ophthalmology and otolaryngology surgery services for the residents of Broome County.

Program Analysis

Project Proposal

Binghamton ASC, LLC d/b/a/ Greater Binghamton Eye Surgery Center, an existing Ambulatory Surgery Center located at 530 Columbia Drive in Johnson City (Broome County), requests approval to transfer 65.00% ownership interest to a new membership LLC, convert from a single specialty to multi-specialty ASC (Otolaryngology) and change the doing business as name. There will be a total increase of 3.00 FTEs in Year One and Year Three for a total of 11.00 FTEs.

The table below details the proposed change in ownership:

Member Name	Current	Proposed
Class A Member		
Daniel Sambursky, M.D.	100.00%	35.00%
Class B Member**		
New York Holdco, LLC Jeffrey Andrews	--	65.00%
Binghamton Health Corp. Katherine Connerton, President/CEO David Mannes, CFO Susan Bretscher, CMIO		
TOTAL	100%	100%

*** Member subject to Character and Competence*

Binghamton Health Corporation is run by an outside manager:

Alexandra Reyes Outside Manager

Character and Competence

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 restructuring, 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 of 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 eh 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, 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 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 the 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

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 financial 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

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 works 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 PainCare/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 monitors 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.

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

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project costs of \$577,477 for moveable equipment and CON fees are broken down as follows:

Moveable Equipment	\$572,329
CON Fee	2,000
Additional Processing Fee	<u>3,148</u>
Total Project Cost	<u>\$577,477</u>

The applicant's financing plan appears as follows:

Equity	\$57,748
Bank Loan (7.13% for a five-year term)	\$519,729

Operating Budget

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

	Current Ended 6/30/2022		Year One 2024		Year Three 2026	
	Per Procedure	Total	Per Procedure	Total	Per Procedure	Total
Commercial FFS	\$1,918	\$844,033	\$2,329	\$1,443,987	\$2,490	\$1,591,284
Commercial MC	\$1,693	\$203,108	\$2,251	\$420,910	\$2,399	\$463,088
Medicare FFS	\$1,555	\$786,641	\$1,543	\$842,643	\$1,652	\$928,609
Medicare MC	\$1,298	\$701,165	\$1,293	\$762,610	\$1,384	\$841,439
Medicaid MC	\$1,678	\$167,844	\$1,188	\$295,919	\$1,272	\$325,721
Private Pay	\$1,401	<u>\$30,825</u>	\$1,299	<u>\$36,365</u>	\$1,367	<u>\$39,654</u>
Total Revenues		\$2,733,616		\$3,802,434		\$4,189,795
Expenses:						
Operating	\$1,612	\$2,789,774	\$1,449	\$3,279,574	\$1,432	\$3,343,352
Capital	<u>\$311</u>	<u>\$538,596</u>	<u>\$344</u>	<u>\$778,785</u>	<u>\$332</u>	<u>\$774,251</u>
Total Expenses	\$1,923	\$3,328,370	\$1,793	\$4,058,359	\$1,764	\$4,117,603
Net Income		(\$594,754)		(\$255,925)		\$72,192
Procedures		1,731		2,264		2,334

The following is noted with respect to the submitted budget:

- Reimbursement rates are based on current reimbursement methodologies.
- Expense and utilization assumptions are based on historical experience.
- Three (3) nonmember physicians have submitted letters of interest supporting the utilization projections in this application and justifying converting the Center to a multi-specialty FASC. The physicians will provide Otolaryngology services, and the applicant projected 456 Otolaryngology procedures in the first year.

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

	Current Year <u>2022</u>	Year One <u>2024</u>	Year Three <u>2026</u>
Commercial FFS	25.42%	27.39%	27.38%
Commercial MC	6.93%	8.26%	8.27%
Medicare FFS	29.23%	24.12%	24.08%
Medicare MC	31.20%	26.06%	26.05%
Medicaid MC	5.78%	11.00%	10.97%
Private Pay	1.27%	1.24%	1.24%
Charity Care	<u>0.17%</u>	<u>1.94%</u>	<u>2.01%</u>
Total	100.00%	100.00%	100.00%

Membership Purchase Agreement

The applicant has submitted an executed membership purchase agreement for the sale of membership interests, which is summarized below:

Date	May 25, 2022
Buyer	New York Holdco, LLC
Seller	Binghamton ASC, LLC (the ASC) and Daniel Sambursky, MD. (Principal)
Purchase Price	\$6,175,000
Payment of Purchase Price	\$550,000 in Escrow and \$5,625,000 due at Closing. The purchaser will provide equity for the remainder.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which is summarized below:

Facility	Binghamton ASC, LLC d/b/a Greater Binghamton Eye Surgery Center
Contractor	Regent Surgical Management, LLC
Services Provided	Provide ongoing support to maintain the Facility's Medicare accreditation status, advise surgery center regarding the purchase of supplies and capital equipment, monitoring all relevant permits. Licenses and all other necessary notifications of the Surgery Center, develop, provide and advise Surgery Center regarding the production and updating of necessary procedure manuals, enter into a revenue cycle and support services agreement to manage Surgery Center's billing and collection requirements; advise Surgery Center with respect to any joint venture accounts and advise on the recruitment of physicians.
Term	7 years
Fee	\$19,634.50 (monthly fee), equal to \$235,614. On each anniversary date, the monthly fee shall be reviewed by the parties to this Agreement.

Lease Rental Agreement

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

Date	July 29, 2022
Premises	The premises are located at 530 Columbia Drive, Johnson City, New York.
Lessor	530 Columbia Drive, LLC
Lessee	Binghamton ASC, LLC d/b/a Greater Binghamton Eye Surgery Center.
Term	15 years
Rental	Year One \$299,442. Each year thereafter, the rent shall increase by 2.75% each year.
Provisions	The lessee shall be responsible for real estate taxes, maintenance, and utilities.

The applicant has submitted an affidavit indicating that this will be a non-arms-length lease arrangement in that Daniel Sambursky, MD., is the sole 530 Columbia Drive, LLC member. The applicant has submitted two real estate letters in support of the per-square-foot rental.

Capability and Feasibility

The purchase price for the membership interest is \$6,175,000 and will be met through equity. The total project cost of \$577,477 will be met with \$57,748 in equity from the proposed members and a bank loan of \$519,729 at an interest rate of 7.13% for a five-year term. BFA Attachment B Financial Summary of Ascension, which includes operations of Our Lady of Lourdes Memorial Hospital, Inc., indicates sufficient funds for the equity contribution.

Working capital requirements are estimated at \$676,393, equivalent to two months of first-year expenses. The applicant will finance \$300,000 at an interest rate of 7.13% for a three-year term. The remainder, \$376,394, will be provided as equity from the proposed member. The personal net worth statements of the proposed individual members are presented as BFA Attachment A and show sufficient resources to cover the working capital

The submitted budget indicates a net loss of \$255,925 and a net income of \$72,192 during the first and third years, respectively. The applicant indicated that first-year losses will be offset with working capital funds. Revenues are based on current reimbursement methodologies for ambulatory surgery services. The submitted budget appears reasonable. Presented as BFA Attachment C is December 31, 2022, internal financial statements of Binghamton ASC, LLC, indicating the entity had negative working capital and net asset positions in 2022. The reason for the negative working capital position and the negative net asset position was the result of cash flow issues as the Center ramped up case utilization and experienced delays in becoming credentialed with various payors for reimbursement issues. As a result, the entity achieved a net income of \$57,615 in 2022.

Conclusion

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

Attachments

Map	Map
BFA Attachment A	Personal Net Worth Statement- Proposed Members
BFA Attachment B	Financial Summary- Ascension
BFA Attachment C	December 31, 2022, internal financial statements of Binghamton ASC, LLC



**Project # 231026-B
Maplemere Ventures, LLC**

Program: Diagnostic and Treatment Center **County:** Erie
Purpose: Establishment and Construction **Acknowledged:** January 31, 2023

Executive Summary

Description

Maplemere Ventures, LLC, a New York limited liability company, requests approval to establish and construct an Article 28 freestanding ambulatory surgery center (FASC) located at 111 North Maplemere Drive, Amherst (Erie County). The Center will be certified as a multi-specialty FASC specializing in orthopedics, endoscopy, colorectal surgery, general surgery, pediatric orthopedic surgery, foot and ankle surgery, plastic surgery, and vascular surgery. The applicant will lease 38,101 square feet on the first floor of an existing medical office building. The site will include (7) seven operating rooms, (3) three procedure rooms, (4) four endoscopy rooms, and requisite support areas. The facility’s assumed name is proposed to be Northtowns Ambulatory Surgery Center.

BFA Attachment A-2 presents the Center’s Class A proposed ownership structure, which consists of 33 individual physicians, University at Buffalo Surgeons, Inc., and University Orthopedic Services, Inc., collectively owning 50% of the FASC. The Class B member, KH Venture Services, Inc., will own the remaining 50%.

KH Venture Services, Inc.’s (KHVS) sole member and passive parent is Kaleida Health. University at Buffalo Surgeons, Inc. (UBS) and University Orthopedic Services, Inc. (UOS) are affiliated with the State University of New York at Buffalo.

Steven Schwaitzberg, M.D., is board certified in Surgery and will serve as the Center’s Medical Director. The applicant will enter a Transfer and

Affiliation Agreement for backup and emergency services with Kaleida Hospitals, 3 miles (7 minutes travel time) from 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 8,498 procedures in Year One and 9,369 in Year Three, with Medicaid at 16% and Charity Care at 2%.

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

Financial Summary
Total project costs of \$22,651,625 will be funded with \$5,651,625 in equity and a 5-year loan of \$17,000,000 with amortization of up to 10 years. The interest rate will be either a fixed rate of 5-Year Cost of Funds (COF) plus 5% or 8.46% as of March 30, 2023, or a variable at one-month Secured Overnight Funding Rate (SOFR), plus 5% or 9.8% as of March 30, 2023. M&T Bank has provided a letter of interest.

Budget:	<u>Year One</u> <u>2024</u>	<u>Year One</u> <u>2026</u>
Revenues	\$24,735,401	\$28,931,430
Expenses:	<u>23,924,494</u>	<u>26,044,294</u>
Gain/(Loss)	\$810,907	\$2,887,136

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 of an executed transfer and affiliation agreement acceptable to the Department. [HSP]
3. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in NYSDOH BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 3.20 LSC Chapter 20 New Ambulatory Healthcare Public Use, for review and approval. [DAS]
4. Submission of an executed project 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 administrative services agreement acceptable to the Department of Health. [BFA]
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 a 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 signed/executed Articles of Organization that are acceptable to the Department. [CSL]
10. Submission of a copy of a signed/executed Operating Agreement that is acceptable to the Department. [CSL]
11. Submission of a copy of a signed/executed Certificate of Assumed Name for Northtowns Ambulatory Surgery Center that is acceptable to the Department. [CSL]
12. Submission of a copy of a signed/executed Administrative Services Agreement that is acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **November 29, 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 **December 29, 2023**, and construction must be completed by **August 29, 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/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [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

June 29, 2023

Need Analysis

Background and Analysis

The service area consists of the greater Buffalo area, including Erie and Niagara Counties. The population of Erie and Niagara Counties, combined in 2022, was 1,161,192 according to the latest US Census data and is projected to decrease slightly to 1,152,744 by 2028. US Census Data lists the following demographics for Niagara and Erie Counties:

Niagara County: 87.2% White, 7.4% Black or African American, 3.7% Hispanic or Latino
 Erie County: 78.8% White, 13.8% Black or African American, 6% Hispanic or Latino

According to Data USA, 96.3% of the population of Erie County and 96.9% of the population of Niagara County had health coverage as follows:

	Erie County	Niagara County
Employer Plans	51.7%	49.7%
Medicaid	19.6%	19.3%
Medicare	13.2%	13.7%
Non-Group Plans	10.7%	13.1%
Military or VA	1.05%	1.19%

The table below shows the number of patient visits for ambulatory surgery centers in Erie County for 2019 through 2021. Currently, there are no ambulatory surgery centers offering multi-specialty surgery services in Niagara County.

Specialty Type	Facility Name	Patient Visits		
		2019	2020	2021
Multi	Ambulatory Surgery Ctr of Western NY	11,747	9,556	12,794
Multi	Atlas Surgery Center (opened 4/21/22)	N/A	N/A	N/A
Multi	Buffalo Ambulatory Surgery Center	11,836	8,674	9,142
Multi	Buffalo Surgery Center	16,199	13,388	18,204
Multi	Center for Ambulatory Surgery ¹	9,159	0	0
Multi	Endoscopy Center of Western NY	13,821	10,424	12,753
Multi	Millard Fillmore Surgery Center	3,827	3,127	3,967
Multi	Southtowns Surgery Center	2,747	2,343	2,832
Multi	Sterling Surgical Center	5,467	3,159	4,442
Multi	WNY Medical -Sheridan (opened 10/16/19)	N/A	1,358	1,735
Total Visits		74,803	52,029	65,869

¹ No data found for 2020 & 2021.

Source: SPARCS

The applicant projects 8,498 procedures in Year One and 9,369 in Year Three with Medicaid at 16% and Charity Care at 2%. 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 primarily in a hospital setting.

According to the applicant, the projected utilization of surgical services includes:

- Colon/rectal (includes endoscopy): 36%
- Orthopedic (includes pediatrics, trauma/foot and ankle, and sports medicine): 33%
- General (includes breast oncology, bariatric, vascular, and thoracic): 24%
- Plastics: 7%

The table below shows the applicant's projected payor mix for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid MC	1,360	16.00%	1,499	16.00%
Medicare MC	2,379	28.00%	2,623	28.00%
Commercial MC	4,249	50.00%	4,685	50.00%
Private Pay	340	4.00%	375	4.00%
Charity Care	170	2.00%	187	2.00%

The center initially plans to obtain contracts with the following Medicaid Managed Care plans BCBSWNY, Medisource, Univera, and Fidelis Care. The center will work collaboratively with local Federally Qualified Health Centers such as Northwest Community Center, Jericho Road Community Centers, and Neighborhood Health Center Mattina 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 various surgery services in an outpatient setting for the residents of Erie and Niagara Counties.

Program Analysis

Project Proposal

Maplemere Ventures, LLC, an existing New York State limited liability company, seeks approval to establish and construct a multi-specialty freestanding ambulatory surgery center specializing in Gastroenterology, Orthopedics, General Surgery, and Colorectal Surgery to be located at 111 Maplemere Drive in Amherst (Erie County).

Proposed Operator	Maplemere Ventures, LLC
Doing Business As	Maplemere Ventures
Site Address	111 Maplemere Drive Amherst, New York 14221 (Erie County)
Surgical Specialties	Multispecialty-Gastroenterology Orthopedics General Surgery Pediatric Orthopedic Surgery Foot and Ankle Surgery Plastic Surgery Vascular Surgery
Operating Rooms	7
Procedure Rooms	7
Hours of Operation	Monday to Friday, 7:00 am to 7:00 pm
Staffing (1st Year / 3rd Year)	82.4 FTEs / 82.4 FTEs
Medical Director(s)	Steven D. Schwaizberg M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Is expected to be provided by: Millard Fillmore Suburban Hospital 2.2 Miles / 6 minutes
On-call service	Patients will receive post-procedure instructions that provide information about who to contact after the Center is closed. A message on the main phone line will direct patients for emergent and non-emergent after-hours care.

Character and Competences

The ownership of Maplemere Ventures, LLC is:

Member Name	Proposed Interest
KH Venture Services, Inc	50.00%
University Orthopedic Services, Inc.	5.00%
University at Buffalo Surgeons, Inc.	3.75%
Timothy Adams	1.25%
Bashir Attuwaybi	1.25%
Steven Barone	1.25%
Jeffrey Bernston	1.25%
Matthew Binkley	1.25%
Leslie Bisson	1.25%
Raphael Blochle	1.25%
John Butsch	1.25%
Linsey Clark	1.25%
Ross Clark	1.25%
Susan Daoust	1.25%

Member Name	Proposed Interest
Tamara Dawli	1.25%
Matthew DiPaola	1.25%
Thomas Duquin	1.25%
Marc Fineberg	1.25%
Chris Hamil	1.25%
Sikndar Khan	1.25%
Joseph Kuechle	1.25%
Brian McGrath	1.25%
Joseph Mills	1.25%
Scott Nodzo	1.25%
John Ortolani	1.25%
Ajay Panchal	1.25%
Yaron Perry	1.25%
Alan Posner	1.25%
Sridhar Rachala	1.25%
Christopher Ritter	1.25%
Christina Sanders	1.25%
Steven Schwaitzberg	1.25%
Andrew Stegmann	1.25%
Stuti Tambar	1.25%
William Wind	1.25%
Gene Yang	1.25%

Timothy Adams, M.D., is A Colon and Rectal Surgeon at UBMD Surgery for five (5) years. He was a Surgeon at Delaware Surgical Group for 11 years. He received his medical degree from SUNY Stony Brook Medical. He completed his General Surgery Residency at SUNY Buffalo. He completed his Colorectal Surgery Fellowship at St. Vincent Hospital. He is Board Certified in General Surgery and Colon and Rectal Surgery.

Mark Anders, M.D., is a Clinical Assistant Professor in Orthopedics at SUNY Buffalo for 28 years. He is an Orthopedist at Buffalo General Hospital, Women and Children's Hospital, and Erie County Medical Center for 28 years. He was an Orthopedist at Mercy Hospital for three (3) years. He was an Orthopedist at the VA Medical Center for six (6) years. He received his medical degree from the University of Wisconsin Madison. He completed his General Surgery Residency and Orthopedic Surgery Residency at SUNY Buffalo. He completed his Orthopedic Trauma Fellowship at Henry Ford Hospital.

Bashir Attuwaybi, M.D., is a Colorectal Surgeon at Buffalo Medical Group and a Clinical Assistant Professor at SUNY Buffalo for 14 years. He received his medical degree from the University of Tripoli Medical School in Libya. He completed his General Surgery Residency and his Colorectal Surgery Fellowship at SUNY Buffalo. He is Board Certified in Surgery with sub-certifications in Colon and Rectal Surgery and Abdominal Surgery.

Steven Barone, M.D. is the Clinical Assistant Professor of Surgery at the University of Buffalo for five (5) years. He was a General/Colorectal Surgeon at the Delaware Surgical Group for seven (7) years. He was a General/Colorectal Surgeon at CCS Healthcare for three (3) years. He received his medical degree from SUNY Buffalo. He completed his residency.

Jeffrey Berndtson, M.D., is a Physician at UBMD Surgery for four (4) years. He was a Partner at Buffalo Medical Group for seven (7) years. He was a Partner at Frontier Surgical Associates for nine (9) years. He received his medical degree from Georgetown University. He completed his General Surgery Residency at SUNY Buffalo.

Raphael Blochle, M.D., is a Clinical Assistant Professor at SUNY Buffalo for seven (7) years. He was the Medical Director of Diversified Clinical Services and ECMC Center for Wound Care and Hyperbaric Medicine for three (3) years. He is the Clinical Assistant Professor of Surgery at SUNY Buffalo for 13 years. He is an Attending Staff Vascular and Trauma Surgeon for 13 years. He was a General Practitioner at Village Clinic for four (4) months. He received his medical degree from the Universidad Autonoma de Guadalajara. He completed his General Surgery Residency and Vascular Surgery Fellowship at SUNY Buffalo. He is Board Certified in General Surgery and Vascular Surgery.

Matthew Binkley, M.D., is an Assistant Professor of Orthopedics at SUNY Buffalo for five (5) years. He is a Shoulder and Elbow Attending at Dayton VA Hospital for six (6) years. He was an Assistant Professor of Orthopedic Surgery at Wright State University for one (1) year. He received his medical degree from the Boonshoft School of Medicine. He completed his Orthopedic Surgery Residency at SUNY Buffalo. He completed his Shoulder and Elbow Fellowship at Johns Hopkins.

Leslie Bisson, M.D. is a Professor in the Department of Orthopedics. He is the President of UBMD Orthopedics & Sports Medicine for 10 years. He is the Professor and Chair of Orthopedics at the University of Buffalo for 10 years. He is the Orthopedic Consultant and Team Physician for the Buffalo Bills for 21 years. He is the Fellowship Director of Orthopedics at SUNY Buffalo for 24 years. He is the Medical Director and Team Orthopedist of the Buffalo Sabers for 26 years. He was a Clinical Professor at RIT's Physician Assistant program. He was the Medical Director of the World Junior Hockey Championships for one (1) year. He was the Fellowship Director of Northtowns Orthopedics, PC for nine (9) years. He was a Partner and Orthopedic Surgeon at Northtowns Orthopedics, PC for nine (9) years. He received his medical degree from Johns Hopkins School of Medicine. He completed his Orthopedic Surgery Residency at Hospital for Special Surgery and Cornell University Medical Center. He completed his Sports Medicine at the American Sports Medicine Institute.

Donald Boyd is the President of Kaleida Health for two (2) years. He creates measurable improvements in patient safety and quality through the design and implementation of the Kaleida Health Quality and Patient Safety Initiative. He optimized the Clinically Integrated Network and readied the organization for population health. He drives clinical and operational integration to confer the distinct and compounding advantages of the system and addresses opportunities to expand the market penetration away from the hospital, and proactively responds to expected pressure from key stakeholders. He was the Executive Vice President and COO of Kaleida Health for one (1) year. He led the development of system-wide quality and patient safety design teams responsible for identifying best practices to realize a culture of quality and achieve the Board approved quality goals.

Jeffrey Brewer, M.D., is a Clinical Associate Professor of Surgery at SUNY Buffalo for three (3) years. He was a Clinical Assistant Professor of Surgery at SUNY Buffalo for 10 years. He is an Attending Staff Surgeon at University at Buffalo Surgeons for 13 years. He is an Attending Staff Surgeon at Sisters of Charity Hospital for over 10 years. He is an Attending Staff Surgeon at the Buffalo VA Medical Center for over 10 years. He was an Emergency Medical Physician at Stokes Reynolds Memorial Hospital for one (1) year. He received his medical degree from SUNY Buffalo. He completed his General Surgery Residency at Wake Forest University Baptist Medical Center. He is Board Certified in General Surgery.

John Butsch, M.D., is a Physician at Kaleida Health and the Chief of Robotic Surgery at Buffalo General Hospital for 10 years. He was a Physician at University of Buffalo Surgeons, Inc. for four (4) years. He was an Assistant Attending at Rush University Medical Center for eight (8) years. He was an Instructor in the Department of General Surgery at Rush Medical College for two (2) years. He was an Assistant Professor of Surgery at Rush Medical College for six (6) years. He received his medical degree from SUNY Buffalo. He is Board Certified in Surgery.

Lindsey Clark, M.D., is a Clinical Assistant Professor in the Department of Orthopedics for 12 years. She is an Orthopedic Spine Surgeon at UBMD Orthopedics & Sports Medicine for 12 years. She received her medical degree from the University of Buffalo. She completed her Orthopedics Residency and Orthopedics Spine Fellowship at the University of Buffalo.

Ross Cole, M.D., is an Attending Physician, Surgeon, and Clinical Staff at UBMD Orthopedics and Sports Medicine for eight (8) months. He received his medical degree from SUNY Buffalo. He completed his Orthopedic Surgery Residency at SUNY Buffalo. He completed his Hand and Upper Extremity Fellowship at SUNY Upstate Medical University.

Susan Daoust, M.D. is an Associate Professor in Orthopedics at the University of Buffalo for four (4) years. She was an Orthopedic Surgeon in the U.S. Air Force for four (4) years. She completed her medical degree at the University of Buffalo. She completed her Residency and Orthopedic Surgery Fellowship at the University of Buffalo.

Tamara Dawli, M.D., is a current Aesthetics Surgery Fellow at New York Eye and Ear for seven (7) years. She completed her Plastic Surgery Residency at Dartmouth Hitchcock Medical Center. She was a Member of the Dartmouth Officer's Association, coordinating Resident's activities. She was a Co-President of Hands Across Borders which enhanced students' international perspective of medicine. She was a Volunteer at the Lighthouse Health Care Clinic. She received her medical degree from SUNY Buffalo.

David DiBacco is the Chief Operating Officer of Kaleida Health Millard Fillmore Suburban Hospital for over four (4) years. He is responsible for clinical ancillary and non-clinical departments, including business operations for surgical services, including OR block utilization, scheduling optimization, new equipment evaluation and purchase, and financial analysis. He was the COO of Eastern Niagara Hospital for over 14 years. He was responsible for clinical ancillary and nonclinical departments, including hospital outpatient department day surgery center from concept to fully operational.

Matthew DiPaola, M.D., is a Clinical Assistant Professor of Orthopedics at SUNY Buffalo for seven (7) years. He is the Founder of Touch Consult for 13 years. He was an Assistant Professor of Orthopedics at Wright State University BoonShoft School of Medicine for seven (7) years. He was the Director of Shoulder and Elbow Service and Orthopedic Surgical Simulation Laboratory at the Dayton VA Medical Center for seven (7) years. He received his medical degree from Cornell Medical College. He completed his Orthopedic Surgery Residency at Thomas Jefferson University. He completed his Reconstructive Shoulder and Elbow Surgery Fellowship at University Hospital for Joint Diseases.

Thomas Duquin, M.D., is a Clinical Assistant Professor of Orthopedics at SUNY Buffalo for 13 years. He is a Director of Medical Student Education for 13 years. He completed his Orthopedic Surgery Residency at SUNY Buffalo. He completed his Upper Extremity Adult Reconstructive Surgery Fellowship at Mayo Clinic. He received his medical degree from SUNY Buffalo.

Michael Ferrick, M.D., is a Professor of Orthopedic Surgery at SUNY Buffalo for two (2) years. He is the Medical Director of Orthopedic Surgery at Oishei Children's Hospital of Buffalo for three (3) years. He is an Attending Orthopedic Surgeon at Oishei Children's Hospital of Buffalo for 21 years. He received his medical degree from the University of Michigan. He completed his Orthopedic Residency at SUNY Buffalo. He completed his Pediatric and Spine Surgery at Texas Scottish Rite Hospital.

Marc Fineberg, M.D., is on the Board of Directors and the Finance Committee of UBMB and Sports Medicine for two (2) years. He is a Member of the Board of Directors and Clinical Operations Committee of Millard Fillmore ASC for 15 years. He is the Chief of Sports Medicine at the UB Department of Orthopedic Surgery for 22 years. He is the Team Physician of the Buffalo Bills for eight (8) years. He is an Orthopedic Consultant for the WNY Flash for nine (9) years. He is a Clinical Associate Professor of Orthopedics at SUNY Buffalo for 13 years. He is the Chief of Sports Medicine at SUNY Buffalo for 22 years. He is the Team Physician for the Buffalo Sabers for 17 years. He is the Assistant Team Physician at Harvard University Athletics. He was the Head Team Physician for the Buffalo Bills for 15 years. He was the Head Team Physician of the Buffalo Bandits for three (3) years. He was an Assistant Clinical Professor of Orthopedic Surgery at SUNY Buffalo for 11 years. He was the Head Team Physician of the Buffalo Bulls for three (3) years. He was the Head Team Physician for the Boston Bruins for one (1) year. He was the Assistant Team Physician for the New England Patriots for one (1) year. He was the Associate Physician for Harvard University Health Services for one (1) year. He received his medical degree from Northwestern University. He completed his Orthopedic Surgery Residency at NYU Hospital for Joint Diseases. He completed his Orthopedic Sports Fellowship at Massachusetts General Hospital.

Phillip Ham, M.D., is an Attending Physician at UBMD Surgery for over two (2) years. He received his medical degree from the Medical College of Georgia. He completed his General Surgery Residency at Augusta University. He completed his Pediatric Surgery Fellowship at Oishei Children's Hospital. He is Board Certified in Pediatric Surgery.

Chris Hamill, M.D., is a Clinical Associate Professor in Orthopedics at SUNY Buffalo for 16 years. He is an Orthopedic Spine Surgeon at UBMD Orthopedics & Sports Medicine for 27 years. He is a Clinical Assistant Professor of Orthopedics at SUNY Buffalo for four (4) years. He was an Orthopedic Spine Surgeon at Simmons Orthopedic & Spine Associates for one (1) year. He received his medical degree from SUNY Buffalo. He completed his General Surgery Residency at SUNY Buffalo. He completed his Orthopedic Surgery Fellowship at Washington University School of Medicine.

Stephen Hardy is the Vice President of Finance of Kaleida Health for over three (3) years. He is responsible for the System's accounting and reporting, budgeting, decision support, and treasury functions. He was the Vice President of Finance of Ohio Health for over six (6) years. He was responsible for reporting to the systems Senior Vice President and, at the system level, for central revenue and reimbursement at two facilities. He was the Vice President of Marion General Hospital for four (4) years. He was responsible for the management of all on-site accounting staff, accounting, treasury, and budgeting functions. He collaborated with various systems' Vice Presidents and leaders on standardizations and process improvements and was responsible for the overall fiscal health of the hospital. He presented monthly financial statements to the leadership team and local board. He was the Vice President of Revenue and Reimbursement for over two (2) years. He completed all cost reports and all government reporting as well as budget revenue for all systems locations, which at the time was eight (8) hospitals. He managed the monthly recognition of revenue, managed and led a team of analysts, and collaborated with the Revenue Cycle Vice President to develop reimbursement and collection strategies for the organization. He developed a standardized monthly projection toll and a system revenue integrity team.

Joseph Kuechle, M.D., is an Orthopedic Oncologist, Trauma Surgeon, and Orthopedic Surgeon at UBMD Orthopedics and Sports Medicine for six (6) years. He is an Assistant Professor of Oncology at Roswell Park for six (6) years. He received his medical degree from the University of Illinois. He completed his Orthopedic Surgery Residency at SUNY Buffalo. He completed his Musculoskeletal Oncology Fellowship at Massachusetts General Hospital.

Sikander Khan, M.D., is a Clinical Assistant Professor of Surgery and an Attending Vascular Surgeon at SUNY Buffalo for five (5) years. He received his medical degree from King Edward Medical College in Pakistan. He completed his General Surgery Residency at Yale School of Medicine. He completed his Vascular Surgery Fellowship at SUNY Buffalo. He is Board Certified in Vascular Surgery.

Joseph Kowalski, M.D., is the Clinical Assistant Professor of Orthopedics at SUNY Buffalo for 24 years. He received his medical degree from SUNY Buffalo. He completed his orthopedic Surgery Residency at SUNY Buffalo. He completed his Spine Surgery Fellowship at Emory University.

Anthony Lelito is the Vice President of Business Development of Kaleida Health for one (1) year. He is responsible for developing new business opportunities and integrating them into Kaleida Health's core operations. He will also craft strategies to implement service line planning, coordinate the organization's ambulatory growth plan, and build relationships with physicians and the community. He has been employed with Kaleida Health for 11 years and held various positions, including Director of Affiliations, Planning and Business Development, Senior Director of Operations, and Strategic Operations Project Manager.

Brian McGrath, M.D., is a Clinical Professor at SUNY Buffalo for 14 years. He was the Chief of Orthopedic Surgery in the Department of Surgical Oncology at Roswell Park for 16 years. He was the Director of Tissue Transplant Services at Kaleida Health for 16 years. He was a Clinical Associate Professor of Orthopedics at SUNY Buffalo for seven (7) years. He was a Clinical Assistant Instructor at the University of Florida for one (1) year. He was a Clinical Assistant Instructor at SUNY Buffalo for five (5) years. He received his medical degree from SUNY Buffalo. He completed his Orthopedic Residency at SUNY Buffalo. He completed his MSK Oncology Certificate from the University of Florida.

Joseph Mills, M.D., is a Colon and Rectal Surgeon at Buffalo Medical Group for over five (5) years. He was a Physician at Kaleida Health for over one (1) year. He was an Administrative Assistant at Kenmore Mercy Hospital for over one (1) year. He received his medical degree from SUNY Buffalo. He completed his General Surgery Residency and Colon and Rectal Surgery Fellowship at SUNY Buffalo.

Michael Mineo, M.D., is the Executive Vice President and System CMO of Kaleida Health for nine (9) months. He was the Vice President and Interim System CMO for four (4) months. He was the Vice President and CMO of Millard Fillmore Suburban Hospital and Degraff Medical Park for two (2) years. He was the Patient Safety and Quality Medical Officer for six (6) months. He is a Senior Physician and Director of Emergency Medicine of Millard Fillmore Suburban Hospital for seven (7) years. He is an Attending Emergency Physician for eight (8) years at Millard Fillmore Suburban Hospital, Degraff Memorial Hospital, and WCCH. He is an Assistant Clinical Professor of Emergency Medicine at SUNY Buffalo for 16 years. He was an Attending Physician and Partner at FDR Medical Services for nine (9) years. He received his medical degree from SUNY Buffalo. He completed his Emergency Medicine Residency at SUNY Buffalo. He is Board Certified in Emergency Medicine.

Brittany Montross, M.D., is a Vascular Surgeon at UBMD Physician Group for over two (2) years. She was a Research Assistant to Anthony Campagnari, Ph.D., for one (1) year. She was an Alpine Race Ski Coach at Holiday Valley Ski Resort for two (2) years. She was Research Assistant to Thomas Melendy, Ph.D., for over one (1) year. She was a Medical Technician for one (1) year. She was a Summer Mathematics Research Assistant for two (2) months. She was a Teaching Assistant at the University of Buffalo for four (4) months. She received her medical degree from the University of Buffalo. She completed her Vascular Surgery Residency at the University of Buffalo. She is Board Certified in Vascular Surgery.

Scott Nodzo, M.D., is a Clinical Assistant Professor in the Department of Orthopedics at the University of Buffalo for three (3) years. He was an Orthopedic Surgeon in the U.S. Air Force for four (4) years. He received his medical degree from the University of Buffalo. He completed his Orthopedic Residency at the University of Buffalo. He completed his Adult Reconstruction and Joint Replacement Fellowship at the Hospital for Special Surgery.

John Ortolani, M.D., is a Clinical Assistant Professor of Surgery at SUNY Buffalo for six (6) years. He is a Surgeon at Erie County Medical Center for six years. He is a Co-Chair of the Hepatobiliary and Colorectal Clinical Performance Group for six (6) years. He received his medical degree from SUNY Buffalo School of Medicine. He is a Member of the Great Lakes Health Cancer Committee. He completed his General Surgery Residency at Virginia Tech Carilion School of Medicine. He completed his Colon and Rectal Surgery Fellowship at Louisiana State University Health Sciences Center. He is Board Certified in Surgery with a sub-certification in Colon and Rectal Surgery.

Ajay Panchal, M.D., is a Clinical Assistant Professor in the Department of Surgery at SUNY Buffalo for five (5) years. He was a General Surgeon at CCS Oncology Practice for five (5) years. He received his medical degree from SUNY Buffalo. He completed his General Surgery Residency at SUNY Buffalo.

Yaron Perry, M.D., is the Chief Division of Thoracic Surgery, Medical Director of the Comprehensive Center for Thoracic Malignancies, and Co-Director of Robotic Surgeries for SUNY Buffalo for over three (3) years. He is the Chief Division of Thoracic Surgery of Erie County Medical Center for over two (2) years. He was the Medical Director of Thoracic Surgery at Ahuja Medical Center for over five (5) years. He was a Director of Minimally Invasive Esophageal Surgery and the Head of Thoracic Robotic Surgery Services at Cleveland Medical Center University Hospitals for six (6) years. He was the Director of Minimally Invasive Thoracic Surgery at Memorial University Medical Center for three (3) years. He was a Trauma and Thoracic Surgeon at Tufts University Medical Center for over two (2) years. He was a Visiting Research Associate in the Department of Surgery at the University of Pittsburgh for one (1) year. He was a General Surgery Attending at the Hadassah Medical Center for one (1) year. He received his medical degree from the Hebrew University and Hadassah Medical School. He completed his General Medicine Residency at Mount Sinai Medical Center, Geisinger Medical Center, the University of Pittsburgh Medical Center, and Hadassah Medical Center. He completed his Minimally Invasive Surgery and Thoracic Surgery Fellowship at the University of Pittsburgh. He is Board Certified in Surgery and Thoracic Surgery.

Matthew Phillip, M.D., is an Orthopedic Surgeon and Board Member for University Orthopedics Services, Inc. for 22 years. He was the Chief of Orthopedics for Kaleida Health for 10 years. He received his medical degree from SUNY Buffalo. He completed his Orthopedic Surgery Residency at SUNY Buffalo. He completed his Lower Extremity Joint Replacement Fellowship at SUNY Buffalo. He is Board Certified in Orthopedic Surgery.

Alan Posner, M.D., is an associate Program Director in Minimally Invasive Surgery at SUNY Buffalo for six (6) years. He is the Clinical Assistant Professor in the Department of Urology at SUNY Buffalo for over 19 years. He was employed at SUNY Buffalo in the Center for Advanced Technology in Biomedical and Bioengineering for three (3) years. He is the Chief of Laparoscopic and Minimally Invasive Surgery at SUNY Buffalo for 23 years. He is a Clinical Assistant Professor in the Department of Surgery at SUNY Buffalo for 28 years. He is the Surgical Director of Bariatric Surgery at Kaleida Health for 19 years. He was a Trauma Surgeon, Burn Surgeon, Advanced Laparoscopic Surgeon, and Bariatric Surgeon at SUNY Buffalo. He is an Attending Staff Surgeon at Kaleida Health for 25 years. He was an Attending Surgeon at Erie County Medical Center and the VA Medical Center. He received his medical degree from Albany Medical College. He completed his General Surgery Residency at SUNY Buffalo. He completed his Laparoscopic Fellowship at Mount Sinai School of Medicine. He is Board Certified in Surgery.

Sridhar Rachala, M.D., is the Medical Director of Joint Replacements at Buffalo General Medical Center for seven (7) years. He is an Attending Surgeon at Buffalo General Hospital for 13 years. He is a Clinical Assistant Professor in Orthopedics at SUNY Buffalo for 13 years. He is an Assistant Professor of Orthopedics and Traumatology at Deacon College of Medical Sciences for one (1) year. He received his medical degree from Osmania Medical College. He completed his Orthopedic Surgery Residency at Osmania General Hospital. He completed his Fellowship at Mayo Clinic.

Michael Rauh, M.D., is the Director of Southtowns Surgery Center for six (6) years. He is a Consultant Orthopedic Surgeon at Great Lakes Sports Outreach for nine (9) years. He is the Medical Director, Head Team Physician, and Consultant Orthopedic Surgeon of the Buffalo Bandits for 11 years. He is a Consultant Orthopedic Surgeon of Nuance, Inc. for 14 years. He is an Assistant Professor of Orthopedic Surgery for SUNY Buffalo for 16 years. He is the Assistant Team Physician for the Buffalo Bulls and Erie Community College Kats for 16 years. He is a Consultant Orthopedic Surgeon at Athleticare Sports Outreach for 16 years. He is the Head Team Physician of Orchard Park High School for 16 years. He is a Text Editor and Reviewer at Lippincott Williams & Wilkins Publishing for 26 years. He received his medical degree from SUNY Buffalo. He completed his General Surgery Residency at SUNY Buffalo. He completed his Sports Medicine Fellowship at the Cleveland Clinic. He completed a second Orthopedics Sports Traumatology Fellowship at the European Federation of National Association of Orthopedics Sports Traumatology.

Christopher Ritter, M.D., is an Assistant Clinical Professor of Orthopedic Surgery at SUNY Buffalo for 19 years. He received his medical degree from SUNY Brooklyn. He completed his Orthopedic Surgery Residency and Orthopedic Surgery Fellowship at SUNY Buffalo. He completed a second Orthopedic Surgery Fellowship at the Florida Orthopedic Institute.

Christina Sanders, D.O., is the Program Director of Bariatric Surgery Fellowship at Erie County Medical Center for eight (8) months. She is the Medical Director of Bariatric Surgery for two (2) years. She is the UBMD Surgery at Erie County Medical Center for over four (4) years. She was a Physician at St. Peter's Health Partners Troy Surgical Group and Samaritan Hospital. She was a Surgeon at Atlantic Surgical Associates for two (2) years. Bariatric and Metabolic Care for over three (3) years. She received her medical degree from the Lake Erie College of Osteopathic Medicine. She completed her General Surgery Residency at University of Medicine and Dentistry of New Jersey. She completed her Advanced Laparoscopic and Bariatric Surgery at Center for Advanced Surgical Training at the Cleveland Clinic. She is Board Certified in Osteopathic Medicine.

Steven Schwartzberg, M.D., is a SUNY Distinguished Service Professor for one (1) year. He is the Proposed Medical Director. He is a Surgeon at Cambridge Health Alliance for 18 years. He is a Professor of Biomedical Information at the Jacob School of Medicine and Biomedical Sciences for seven (7) years. He is a Professor and Chair of Surgery at the University of Buffalo for eight (8) years. He was a Professor in the Department of Surgery at Harvard Medical School for three (3) years. He was a Surgeon at 365th

Evacuation Hospital. He was an Associate Professor at Bouve College of Health Sciences for four (4) years. He was an Associate Professor at Tufts University for 23 years. He is an Associate Professor in the Department of Surgery at Harvard University for eight (8) years. He was an Instructor in the Department of Surgery at Baylor College of Medicine for one (1) year. He received his medical degree from Baylor College of Medicine. He completed his General Surgery Residency at Baylor Affiliated Hospitals. He completed his Pediatric Trauma Fellowship at the Pediatric Trauma Institute at the Floating Hospital for Children.

Alyson Spaulding is the General Counsel for Kaleida Health for eight (8) years. She provides primary legal counsel for Kaleida Health and its corporate affiliates. She also oversees the Corporate Legal Transactions department, Risk Management, Emergency Management, Internal Audit and Corporate Compliance, and Research Management. She was the previous Associate General Counsel for Corporate Risk Management, where she directed Kaleida Health's risk management, emergency management, and regulatory affairs functions. She also oversaw the commercial insurance portfolio and legal services related to professional and general liability.

Andrew Stegeman, D.O., is a Clinical Assistant Professor in the Department of Orthopedics for eight (8) months. He received his medical degree from the University of New College of Osteopathic Medicine. He completed his General Surgery residency and Fellowship at SUNY Buffalo.

Phillip Stegeman, M.D., is the Chief of Orthopedics at Erie County Medical Center for 26 years. He is the Clinical Director of Erie County Medical Center for 26 years. He is a Staff Orthopedist for UBMD Orthopedics & Sports Medicine for 31 years. He is an Assistant Professor of Orthopedics at SUNY Buffalo for 34 years. He was a Staff Orthopedist at the VA Medical Center for three (3) years. He was a Staff Orthopedist at Erie County Medical Center for one (1) year. He was a Staff ER Physician at Columbus Hospital, Our Lady of Victory Hospital, and Sister's Hospital for one (1) year. He received his medical degree from SUNY Buffalo. He completed his Orthopedic Surgery Residency at SUNY Buffalo.

Stuti Tambar, M.D., is the Director of Breast Surgery at the Breast Center at Comprehensive Blood and Cancer Center for five (5) years. She was a Volunteer Physician at Mammogram Day at MedStar Washington Hospital Center for five (5) months. She was a Member of the Duty Hour Subcommittee of Graduate Medical Education at SUNY Buffalo for over three (3) years. She received her medical degree from SUNY Buffalo. She completed her General Surgery Residency at SUNY Buffalo. She completed her Breast Surgery Oncology Fellowship at Georgetown University. She is Board Certified in Surgery.

William Wind, M.D., is a Clinical Associate Professor at SUNY Buffalo Department of Orthopedic Surgery for four (4) years. He was a Clinical Assistant Professor at SUNY Buffalo Department of Orthopedic Surgery for over 15 years. He is the Sports Medicine Fellowship Director at SUNY Buffalo for over two (2) years. He is the Medical Director of Sports Medicine Services of Niagara Falls Memorial Medical Center for 18 years. He is a Member of the Surgical Executive Committee for COVID-19 at Kaleida Health for three (3) years. He is the Director of the Western New York Cartilage Restoration Center at SUNY Buffalo's Department of Orthopedics and UBMD Orthopedics and Sports Medicine for over 19 years. He is the Clinical Chief of Orthopedics at Millard Fillmore ASC for 13 years. He is the Medical Director of Millard Fillmore ASC for seven (7) years. He was on the Board of Directors of Southtowns Surgery Center for six (6) months. He received his medical degree from SUNY Buffalo. He completed his Orthopedic Residency at SUNY Buffalo. He completed his Sports Medicine Fellowship at the Cleveland Clinic. He is Board Certified in Orthopedic Surgery with a sub-certification in Sports Medicine.

Gene Yang, M.D., is a Clinical Assistant Professor in the Department of Surgery at SUNY Buffalo for over one (1) year. He received his medical degree from Sidney Kimmel Medical College. He completed his General Surgery Residency at SUNY Buffalo. He completed his Advanced GI Minimally Invasive Surgery Fellowship at the University of California San Diego.

Ahmad Zaaroura, M.D., is a Clinical Assistant Professor of General Surgery and the Kidney and Pancreas Transplant division at SUNY Buffalo for five (5) years. He was the Public Health Coordinator for UNICEF for four (4) years. He was responsible for disseminating information about abuse, exploitation, and violence with a focus on underserved and disadvantaged populations in Lebanon. He was a Practitioner in the Palestine Red Crescent Society for two (2) years. He received his medical degree from

Al-Baath University in Syria. He completed his General Surgery Residency at Clemenceau Medical Centre. He completed his Abdominal Organ Transplantation Surgery Fellowship at Ohio State University. He completed his Pediatric Transplant, Advanced Liver Transplant, and Hepatobiliary Surgery at Duke University Medical Center.

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. Berndtson disclosed one malpractice suit. The malpractice suit was filed in 2020, arising from an incident in 2015 alleging delay in diagnosis. The suit was filed by the patient who had an inguinal hernia repair in 2015. The patient reported onset of groin pain on the side of surgery in 2016. Dr. Berndtson suspected neuritis and referred the patient to pain management for intervention and a potential nerve ablation. Pain Management confirmed the diagnosis of neuritis, and the patient elected for conservative management. However, due to ongoing pain, the patient elected to have the ablation in 2017. The patient had imaging prior to surgery, which revealed a lesion in their pelvis which was subsequently diagnosed as sarcoma. The lawsuit is pending.*
- *Dr. Barone disclosed three malpractice suits. The first malpractice suit was filed in September 2018. The plaintiff filed the suit alleging medical care rendered to the defendant was negligent, carelessly, and unskillfully performed. Dr. Barone's partner performed the surgery on the patient. Dr. Barone answered a post-operative phone call while he was on call. The patient presented to the Emergency Department and died. The family declined an autopsy. After deposition, the case was dropped by the plaintiff's attorney.*
- *The second malpractice case disclosed by Dr. Barone was filed in July 2020. The plaintiff filed the suit alleging solely due to the negligence of the defendants, the patient was injured and died while experiencing great conscious pain and suffering, and his estate suffered monetary damages. Dr. Barone was operating in a different OR and was asked to enter a urology case to assist with uncontrolled bleeding. A Vascular Surgeon was also consulted and arrived. The surgeons attempted to localize the source of bleeding but were unable, and the patient ultimately died due to the injury. The case is pending.*
- *The third case disclosed by Dr. Barone was filed in April 2021. The plaintiff alleged negligence and medical malpractice. Dr. Barone performed a right hemicolectomy for a polyp that could not be removed by endoscopy. He suffered an anastomotic leak. Once this was recognized, the patient was taken back to the OR for a resection of the anastomosis and a creation of an ileostomy. While the patient was hospitalized, he suffered sepsis and renal failure. The case is pending.*
- *Dr. Montross disclosed one malpractice case. It is a pending matter where Dr. Montross was not involved in the care of the patient.*

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, who is a jointly owned with a health system, is planning to align this site with other offerings from the health system, including primary care. The facility will also have an attached medical office building that will offer primary care services. The Center is committed to serving all persons in need of surgical services without regard to race, sex, age, religion, creed, sexual orientation, ability to pay, source of payment, or other personal characteristics.

The Center intends to contract with the following FQHCs Northwest Community Center, Neighborhoods Health Center Mattina, and Jericho Road Community Centers, with the purpose of serving the uninsured and Medicaid population. The Center will participate with the following Medicaid Managed Care Plans, including Highmark BCBSWNY Medicaid Plan, Independent Health Associations Medicsource, Univara Healthcare MyHealth, and Fidelis Care.

The Center intends on using an Electronic Medical Record (EMR) program. The Applicant plans to be a part of HealthLink and HealthIntent.

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

Total project costs for new construction and the acquisition of moveable equipment are estimated at \$22,651,625, broken down as follows:

New Construction	\$10,740,517
Design Contingency	1,074,052
Construction Contingency	537,026
Fixed Equipment	1,990,277
Architect/Engineering Fees	452,000
Construction Manager Fees	633,000
Other Fees	525,000
Movable Equipment	6,159,764
Telecommunications	115,000
Interim Interest Expense	299,097
CON Application Fee	2,000
CON Processing Fee	<u>123,892</u>
Total Project Cost	\$22,651,625

The applicant's financing plan appears as follows:

Cash Equity (Members)	\$5,651,625
Project Loan, 5-year, 10-year amortization*	<u>17,000,000</u>
Total	\$22,651,625

*The interest rate will be either a fixed rate of 5-Year Cost of Funds (COF) plus 5% or 8.46% as of March 30, 2023, or a variable at one-month Secured Overnight Funding Rate (SOFR), plus 5% or 9.8% as of March 2023. M&T Bank has provided a letter of interest.

BFA Attachments A-1 present the members' net worth summaries. BFA B-1 and B-2 present University at Buffalo Surgeons Inc. and University Orthopedic Services, Inc. 2021 certified financial statement, which shows sufficient resources to meet the equity requirements. Kaleida Health will be the source of the KH Venture Services, Inc. equity contribution documented in a letter from its vice president of finance. BFA Attachment C presents Kaleida Health 2021 certified financial statement, which shows sufficient resources to meet its equity commitment.

Operating Budget

The applicant has submitted their first- and third years' operating budgets in 2023 dollars, as summarized below:

	<u>Year One</u> <u>2024</u>		<u>Year Three</u> <u>2026</u>	
	<u>Per</u> <u>Procedure</u>	<u>Total</u>	<u>Per</u> <u>Procedure</u>	<u>Total</u>
Revenues				
Medicaid Managed Care	\$2,546.29	\$3,462,956	\$2,702.07	\$4,050,400
Medicare Managed Care	\$2,807.30	6,678,558	\$2,978.07	7,811,486
Commercial Managed Care	\$3,260.02	13,851,825	\$3,458.19	16,201,601
Private Pay	\$2,182.54	<u>742,062</u>	\$2,314.51	<u>867,943</u>
Total Revenues		\$24,735,401		\$28,931,430
Expenses:				
Operating	\$2,339.22	\$19,878,713	\$2,363.07	\$22,139,560
Capital	<u>\$476.09</u>	<u>4,045,781</u>	<u>416.77</u>	<u>3,904,734</u>
Total Expenses	\$2,815.31	\$23,924,494	\$2,779.84	\$26,044,294
Net Income or (Loss)		<u>\$810,907</u>		<u>\$2,887,136</u>
Utilization (procedures)		8,498		9,369
Cost Per Procedure		\$2,815.31		\$2,779.84

Utilization by the payor for the first and third years is summarized below:

	<u>Year One</u> <u>2024</u>		<u>Year Three</u> <u>2026</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Payor:				
Medicaid MC	1,360	16.00%	1,499	16.00%
Medicare MC	2,379	28.00%	2,623	28.00%
Commercial MC	4,249	50.00%	4,685	50.00%
Private Pay	340	4.00%	375	4.00%
Charity	<u>170</u>	<u>2.00%</u>	<u>187</u>	<u>2.00%</u>
Total	8,498	100%	9,369	100%

Breakeven utilization is 8,220 procedures or approximately 96.73% of the first-year projected volume.

The following is noted concerning the submitted FASC budget:

- Reimbursement rates reflect current and projected Federal and State government reimbursement methodologies, with commercial and private payers reflecting adjustments based on regional experience.
- Operating revenues by payor are based on the Kaleida Health historical experience.
- Utilization is based on 41 physicians' letters of interest in performing procedures at the Center.
- Staffing based on the industry benchmarks for multi-specialty surgery centers. Salaries and benefits are based on Kaleida Health's experience at their FASCs. Other costs are estimated based on industry benchmarks.

Lease Agreement

The applicant has submitted an executed lease agreement; the terms are summarized below:

Date:	June 21, 2021
Premises:	39,858 square feet located at 111 North Maplemere Road, New York 14228
Landlord:	111 North Maplemere, LLC
Lessee:	Bones & Guts, LLC.
Term:	20 years.
Rental:	Rent at \$1,155,882 (\$29 per sq. ft.) with 1.5% yearly increases.
Provisions:	Utilities, Maintenance, Insurance, and Taxes

Assignment of Lease Agreement and Second Amendment to Lease Agreement

The applicant has submitted an executed assignment of the lease agreement and a second amendment to the lease agreement; the terms are summarized below:

Date:	January 12, 2023
Premises:	38,101 sq. ft located at 111 North Maplemere Road, New York 14228
Landlord Predecessor-In-Interest:	111 North Maplemere, LLC
Landlord:	Amherst 111 APL RKC, LLC
Assignor:	Bones & Guts, LLC
Assignee:	Maplemere Ventures, LLC.
Term:	20 years.
Rental:	Rent at \$1,155,882 (\$29 per sq. ft.) with 1.5% yearly increases.
Provisions:	Utilities, Maintenance, Insurance, and Taxes

The applicant has provided an affidavit stating that the lease is an arm's length agreement. The applicant also states that Bones & Guts, LLC leased the property as a "place holder" on behalf of the "to be formed LLC. Letters from two New York State licensed realtors have been provided attesting to the rental rate being fair market value.

Administrative Service Agreement

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

Facility:	Maplemere Ventures, LLC (assumed) d/b/a Northtowns Ambulatory Surgery Center.
Contractor:	University Orthopedic Services, Inc. (UOS)
Services Provided:	UOS shall perform the following financial and operational services in the name, on behalf, and for the benefit of the Center. Financial management services, budget, accounting, discounts, uncompensated services, accounts payable, payroll, banking, financial reporting, and tax filings. Assist in obtaining and maintaining governmental approvals for licenses and program certification. Manage equipment acquisitions. Assist with credentialing services, information systems, purchasing insurance, billing, and collection.
Term:	One year with automatic one (1) year renewals
Fee:	\$1,250,000 per year

University Orthopedic Services, Inc is also a member of the operating company. 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

Total project costs of \$22,651,625 will be funded by \$5,651,625 in equity and a 5-year loan of \$17,000,000 with amortization of up to 10 years. The interest rate will be at the above-stated value. M&T Bank has provided a letter of interest.

The working capital requirement is estimated at \$4,340,716 based on two months of third-year expenses. Funding will be as follows: \$2,348,375 from members' equity, with the remaining \$1,992,341 satisfied by a two-year loan. The interest rate will be either a fixed rate of 5-Year Cost of Funds (COF) plus 5% or 8.46% as of March 30, 2023, or a variable at one-month Secured Overnight Funding Rate (SOFR), plus 5% or 9.8% as of March 2023. M&T Bank has provided a letter of interest. A review of BFA Attachments A-1, B-1, B-2, and C, members' net worth summaries, University at Buffalo Surgeons Inc., University Orthopedic Services, Inc. 2021 certified financial statement, and Kaleida Health 2021 certified financial statement shows sufficient resources for the equity commitment.

Attachment B-1 and B-2 University at Buffalo Surgeons Inc., University Orthopedic Services, Inc. 2021 certified financial statements show positive working capital, positive net assets, and excess revenue over expenses for 2021 of \$500,094 and \$1,060,145, respectively. Attachment C Kaleida Health 2021 certified financial statement shows positive working capital, positive net assets, and a loss for 2021 of (\$8,146,000). Maplemere Ventures, LLC projects an operating surplus of \$810,907 and \$2,887,136 in the first and third years. And BFA Attachment D presents the Center's pro forma balance sheet that shows operations will start with \$8,000,000 in equity. The applicant's budgets appear to be reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A-1	Maplemere Ventures, LLC members' net worth summaries
BFA Attachment A-2	Members and Ownership Interest in Maplemere Ventures, LLC
BFA Attachment B-1	University at Buffalo Surgeons Inc., 2020-2021 certified financial statement
BFA Attachment B-2	University Orthopedic Services, Inc. 2020-2021 certified financial statement
BFA Attachment C	Kaleida Health 2020-2021 Certified Financial Statement
BFA Attachment D	Pro Forma Balance Sheet of Maplemere Ventures, LLC
BFA Attachment E	KH Venture Services Inc. ownership in New York State healthcare facilities



Project # 231137-E Gastroenterology Care, Inc

Program: Diagnostic and Treatment Center County: Kings
Purpose: Establishment Acknowledged: April 5, 2023

Executive Summary

Description

Gastroenterology Care, Inc (GCI), an existing Article 28 diagnostic and treatment center (D&TC) certified as a single-specialty (gastroenterology), freestanding ambulatory surgical center (FASC) at 8622 Bay Parkway, Brooklyn (Kings County), is seeking approval to transfer 100.00% ownership interest from the sole withdrawing member to four new physicians. GCI has been in operation since 2011 and obtained an indefinite life operating certificate in 2016. There will be no changes in services offered, or location served.

On December 9, 2022, Dr. Alexander Brodsky, the current sole shareholder, and owner of 2,000 outstanding shares of GCI, entered into a Securities Purchase Agreement (SPA) to sell all outstanding shares in GCI to the four proposed physicians who are currently practicing at Gastroenterology Associates of Brooklyn, a private physician practice. Upon approval of this application and effectuation of this transaction, Dr. Brodsky will continue to operate at the Center with a reduced workload and eventually phase out.

Ownership before and after the requested change is as follows:

Table with 1 column: Current Operator Gastroenterology Care, Inc. Member: Alexander Brodsky, M.D., Ph.D. 100%

Table with 2 columns: Proposed Operator Gastroenterology Care, Inc. Members: Rabin Rahmani, M.D. 25%, Nison Badalov, M.D. 25%, Pierre Hindy, M.D. 25%, Ian Walls, M.D. 25%, Total 100%

Pierre Hindy, M.D., will continue as the medical director. GCI has an existing transfer and affiliation agreement with NYU Langone Hospital Brooklyn, located 5.8 miles (12 minutes travel time) from the Center, to provide backup and emergency services to the Center, which will remain in effect upon approval of this application.

OPCHSM Recommendation Contingent approval with an expiration of the operating certificate three years from the date of its issuance.

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).

Financial Summary

There are no project costs for this application. The total purchase price for the 2,000 outstanding shares of stock is \$3,500,000 and will be funded with equity from the proposed new members.

<u>Budget:</u>	<u>Year One</u> <u>(2024)</u>	<u>Year Three</u> <u>(2026)</u>
Revenues:	\$2,270,692	\$2,303,008
Expenses:	<u>2,188,438</u>	<u>2,197,883</u>
Gain/(Loss):	\$82,255	\$105,125

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 three years from the date of its issuance, contingent upon:

1. 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. 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]

Council Action Date

June 29, 2023

Program Analysis

Character and Competence

The proposed membership Gastroenterology Care, Inc. is provided in the chart below.

Member Name/Title	Current Ownership	Proposed Ownership
Alexander Brodsky, M.D.	100%	0%
Rabin Rahmani, M.D. **	0%	25%
Nison Leviyevich Badalov, M.D. **	0%	25%
Pierre Hindy, M.D. **	0%	25%
Ian Wall, D.O. **	0%	25%
Total	100%	100%

** Members Subject to Character and Competence

Nison Badalov, M.D., is the Medical Director of South Brooklyn Endoscopy Center for eight (8) years. He is the Owner and Founding Member of Gastroenterology Associates of Brooklyn PLLC for nine (9) years. He is the Owner and Founder of Nison L Badalov MD, PC, for 22 years. He was a Faculty Member in the Department of Gastroenterology for six (6) years. He received his medical degree from St. George's School of Medicine. He completed his Internal Medicine Residency at Maimonides Medical Center. He completed his Gastroenterology Fellowship at Maimonides Medical Center. He completed his Transplant Hepatology Fellowship at Mount Sinai School of Medicine. Dr. Badalov discloses ownership interest in the following healthcare facilities:

South Brooklyn Endoscopy Center

2015 - present

Pierre Hindy, M.D., is a Gastroenterologist at Mount Sinai Beth Israel for 11 years. He is an Attending Gastroenterologist at NY Presbyterian for 11 years. He is an Attending Gastroenterologist at NY Community Hospital for 11 years. He is the Medical Director of Gastroenterology Associates of Brooklyn for nine (9) years. He is a Board Member of South Brooklyn Endoscopy Center for nine (9) years. He is a Clinical Assistant Professor at SUNY Downstate for one (1) year. He was a Clinical Interviewer at St. George's University School of Medicine for five (5) years. He was a Consultant Gastroenterologist at the Brooklyn VA Hospital for 10 years. He was an Attending Gastroenterologist at Kings County Hospital for five (5) years. He is the Proposed Medical Director. He received his medical degree from St. George's University School of Medicine. He completed his Gastroenterology Residency and Fellowship at SUNY Downstate. He is Board Certified in Internal Medicine, Bariatric Medicine, and Gastroenterology.

Dr. Rabin Rahmani is the President, Physician, Owner, and Founding Member of Gastroenterology Associates for nine (9) years. He is a Gastroenterologist at ODA Health Center for nine (9) years. He is the Medical Director of South Brooklyn Endoscopy Center for three (3) years. He was the Director of Medical Education and Research in the Division of Gastroenterology for nine (9) years. He was a Gastroenterologist at NY Hotel Trade Council Benefit Fund for (8) years. He received his medical degree from the Albert Einstein College of Medicine. He completed his Internal Medicine Residency at Albert Einstein College of Medicine. He completed his Gastroenterology Fellowship at Maimonides and the Transplant Hepatology Fellowship at Mount Sinai Medical Center. Dr. Rahmini discloses ownership interest in the following healthcare facilities:

South Brooklyn Endoscopy Center

2019 - present

Ian Wall, D.O., is a Physician and Partner at Gastroenterology Associates of Brooklyn for nine (9) years. He is a Gastroenterology Specialist at VA New York Harbor Health System Brooklyn Campus for eight (8) years. He was a Physician at Brooklyn Gastroenterology and Endoscopy for four (4) years. He received his medical degree from Des Moines University. He completed his Internal Medicine Residency at Maimonides Medical Center. He completed his Transplant Hepatology Fellowship at Mount Sinai Medical Center and his Gastroenterology Fellowship at Maimonides Medical Center.

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

Operating Budget

The applicant has provided the current year (2021) results and the first- and third-year operating budget, in 2023 dollars, after the change in ownership. The budget is summarized below:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>(2021)</u>		<u>(2024)</u>		<u>(2026)</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Revenues:						
Commercial FFS	\$1,126.02	\$809,610	\$1,117.89	\$866,363	\$1,117.89	\$883,132
Medicare FFS	\$540.46	363,732	\$538.41	379,039	\$537.67	384,433
Medicare MC	\$543.61	233,752	\$539.86	243,476	\$541.02	246,166
Medicaid FFS	\$560.54	54,933	\$555.78	57,245	\$558.27	58,060
Medicaid MC	\$580.84	715,591	\$575.51	724,570	\$575.31	731,217
Private Pay		1,376		0		0
Total Oper. Rev.		2,178,994		2,270,692		2,303,008
Other Oper. Rev.		<u>166,583</u>		<u>0</u>		<u>0</u>
Total Revenue		<u>\$2,345,577</u>		<u>\$2,270,692</u>		<u>\$2,303,008</u>
Expenses:						
Operating	\$568.62	\$1,806,509	\$550.54	\$1,831,654	\$545.51	\$1,841,099
Capital	<u>116.08</u>	<u>368,813</u>	<u>107.24</u>	<u>356,784</u>	<u>105.71</u>	<u>356,784</u>
Total Expenses	<u>\$684.71</u>	<u>\$2,175,322</u>	<u>\$657.78</u>	<u>\$2,188,438</u>	<u>\$651.22</u>	<u>\$2,197,883</u>
Operating Income/(Loss)		\$170,255		\$82,255		\$105,125
Procedures Cost/Procedure		3,177 \$684.71		3,327 \$657.78		3,375 \$651.22

The following is noted with respect to the submitted budget:

- Revenues and expenses are based on GCI's 2021 Cost Report and the experience of the applicant in providing gastroenterology services.
- Utilization in Years One and Three is based on the experience of the four proposed physician shareholders of GCI, one new practicing physician, and Dr. Brodsky's reduced case workload in Year 1.
- The applicant expects to sustain existing volume of procedures, revenues, and expenses with conservative increases in Years One and Three based on the proposed physician shareholders' volume letters and possible transfer of cases from South Brooklyn Endoscopy Center.
- As of May 17, 2023, the facility had no outstanding Medicaid overpayment liabilities.

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

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	22.6%	23.3%	23.4%
Medicare FFS	21.2%	21.2%	21.2%
Medicare MC	13.5%	13.6%	13.5%
Medicaid FFS	3.1%	3.1%	3.1%
Medicaid MC	38.8%	37.8%	37.7%
Private Pay	0.8%	0.0%	0.0%
Charity Care	<u>0.0%</u>	<u>1.0%</u>	<u>1.0%</u>
Total	100.0%	100.0%	100.0%

Securities Purchase Agreement

The applicant has submitted an executed Securities Purchase Agreement (SPA), effectuated on December 9, 2022, and summarized as follows:

Date:	December 9, 2022
Seller:	Alexander Brodsky, M.D.:
Buyer:	Nison Leviyevich Badalov, M.D. Pierre Hindy, M.D. Rabin Rahmani, M.D. Ian Michael Wall, D.O.
Securities:	2,000 shares of stock of Gastroenterology Care, Inc., a New York corporation that owns and operates an ambulatory surgery center located at 8622 Bay Parkway, Unit 1B, Brooklyn, New York.
Purchase and Sale of Shares	At the closing, seller shall sell, transfer, convey, assign, and deliver the shares to buyer.
Purchase Price:	\$3,500,000
Seller's Deliverables	At the closing, seller shall assign and convey the shares to buyer (equally among them) by the execution and delivery of stock powers in a form agreed to by the parties, along with any certificates evidencing the shares, which may be necessary to effectively convey all of seller's rights, title, and interest in the shares to buyer (equally among them) and deliver to the buyer; resign as an officer and director of GCI; deliver to buyer all other documents reasonably required by buyer to consummate the transactions contemplated hereunder and deliver a closing certificate to buyer certifying that seller has met all of its obligations.
Buyer's Deliverables	At the closing, the buyer shall deliver an amount equal to the purchase price via wire transfer of immediately available funds to an account designated in written wiring instructions delivered by seller, deliver to seller all other documents reasonably required by seller to consummate the transactions contemplated hereunder and deliver a closing certificate to seller certifying that buyer has met all of its obligations.

Lease Agreement

The applicant provided an executed Lease Agreement for the existing site, the terms of which are summarized below:

Premises:	Unit # 1B 8622 Bay Parkway in Brooklyn, NY 11214
Landlord:	Stony Run Equities Inc.
Lessee:	Gastroenterology Care, Inc.
Term:	10 years from Commencement Date with two (2) 5-year extensions.
Rent:	\$58,500 annually (\$4,875 per month) with a 3% annual increase
Provisions:	Taxes, insurance, repairs and maintenance, improvements, and alterations.

The applicant has submitted an affidavit stating that the lease arrangement is an arm's length agreement.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the 2,000 outstanding shares of stock is \$3,500,000 and will be funded with equity from the proposed new members. The working capital requirement is \$364,740 based on two months for the first year's expenses and will be funded through proposed member equity. Dr. Rabin Rahmani has submitted an affidavit stating he will contribute a disproportionate share of the equity requirement.

BFA Attachment C is the summary of the 2021 Certified Financial Statements for Gastroenterology Care, Inc. The 2021 Certified Financial Statements show negative working capital, positive net asset position, and a positive operating income of \$170,255. The facility's negative working capital is attributable to a \$130,005 PPP loan obtained by the Center in 2021, which was recorded as a current liability on the

balance sheet. The PPP loan was subsequently forgiven by the Small Business Association (SBA) on February 22, 2022.

BFA Attachment D presents a summary of the internal financial statements for the year ended December 31, 2022, which shows negative working capital, a negative net asset positions and an operating loss of \$48,533. The operating loss was offset by \$130,005 attributable to the SBA PPP loan forgiveness, resulting in a net income of \$81,472. The 2022 operating loss results from guaranteed payments to the sole shareholder of GCI and employed physicians at the Center ceasing to provide gastroenterology services.

BFA Attachment E presents financial statements for the Center for the period ended March 31, 2023, during which GCI reported negative working capital, a positive net asset position, and a net income of \$105,256. The implementation of this project, with the addition of four gastroenterologists, is expected to resolve the current operating concerns.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Attachments

BFA Attachment A	Proposed Members' Net Worth Statements
BFA Attachment B	Proposed Members' Equity Analysis
BFA Attachment C	Gastroenterology Care, Inc. 2021 Audited Financial Statements
BFA Attachment D	Gastroenterology Care, Inc. Internal Financial Statements for year-ended December 31, 2022
BFA Attachment E	Gastroenterology Care, Inc. Internal Financial Statements for period-ended March 31, 2023
BFA Attachment F	Organizational Chart
BFA Attachment G	Pro Forma



**Project # 222133-B
NY PACE Facility, Inc.**

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

Executive Summary

Description

NY PACE Facility, Inc. (NY PACE), a New York not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to exclusively serve Welbe Health NYC PACE, LLC's (Welbe NYC) Article 44 Program of All-Inclusive Care for the Elderly (PACE). NY PACE will be certified for Medical Services - Primary Care and Dental O/P services.

NY PACE will have four exam rooms, a dental room, and requisite support space on the second floor of an existing building located at 5521 8th Avenue, Brooklyn (Kings County). The Article 44 PACE program will have space on the second through fourth floors of the same building at 5521 8th Avenue, Brooklyn.

The organization chart (BFA Attachment A) shows the NY PACE's sole and passive corporate member is Welbe Health NY PACE, LLC, which is also the sole corporate member of the proposed Article 44 PACE. Welbe Health NY PACE, LLC is owned by Welbe Health PACE, LLC (80%) and CAIPA Care, LLC (20%). Welbe Health PACE, LLC is owned by Welbe Health, LLC (100%), and CAIPA Care, LLC is owned by CAIPA, Inc. (100%). The reserved powers for NY PACE Facility, Inc. Article 28 D&TC will remain with its Board of Directors.

George Lui, M.D., is Board-Certified in Internal Medicine and will serve as Medical Director. The Center will have a transfer and affiliation agreement for emergency and backup services with Maimonides Medical Center, 1 mile (7 minutes travel time) from the proposed D&TC.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 2,808 visits in Year 1 and 13,176 in Year 3 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 project costs of \$900,781 will be met with equity from Welbe Health, LLC.

<u>Budget:</u>	<u>Year One</u> <u>2024</u>	<u>Year Three</u> <u>2026</u>
Revenues	\$1,352,662	\$3,304,265
Expenses:	<u>\$1,381,969</u>	<u>\$3,302,571</u>
Gain/(Loss)	(\$29,307)	\$1,694

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 final approval of the Article 44 Welbe Health NYC PACE application. [PMU]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed Administrative Services Agreement acceptable to the Department of Health. [BFA]

Approval conditional upon

1. This project must be completed by **September 29, 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 **November 29, 2023**, and construction must be completed by **June 29, 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 staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

June 29, 2023

Need Analysis

Background and Analysis

The primary service area includes Sunset Park and the surrounding communities in Kings County.

The applicant projects 2,808 visits in Year 1 and 13,176 in Year 3 of operations. These projections are based on the projected number of PACE program participants as outlined in Welbe Health NYC PACE, LLC's Article 44 Application. The proposed location is in a Primary Care Health Professional Shortage Area.

The PACE provides comprehensive medical and social services to elderly individuals, most of whom are dually eligible for Medicare and Medicaid benefits. An interdisciplinary team of health professionals provides PACE participants with coordinated care with the intent of enabling the individuals to remain in the community rather than receive care in a nursing home.

The proposed facility will have a transfer and affiliation agreement for emergency and backup services with Maimonides Medical Center, which is approximately 1.0 mile and 7 minutes travel time from the proposed D&TC. The initial hours of operation will be Monday through Friday from 8:30 a.m. to 4:00 p.m. Days and hours of operation will vary as demand dictates. PACE will also have an after-hours on-call service available to enrollees 24 hours per day, 365 days per year.

Conclusion

Approval of this project will allow for expanded access to PACE for residents of Kings County.

Program Analysis

Project Proposal

NY PACE Facility, Inc., an existing New York State not-for-profit corporation, seeks approval to establish and construct an Article 28 diagnostic and treatment center to be located at 5521 8th Avenue in Brooklyn (Kings County). The site will be certified for Medical Services-Primary Care and Dental O/P services and will solely serve Welbe Health NYC PACE, LLC Care for the Elderly PACE. The PACE program will provide primary medical care, outpatient dental services, and phlebotomy.

Proposed Operator	NY PACE Facility, Inc.
To Be Known As	NY PACE Facility, Inc.
Site Address	5521 8 th Avenue Brooklyn, New York 11220 (Kings County)
Specialties	Medical Services - Primary Care Dental O/P Services
Hours of Operation	Monday to Friday, 8:00 am to 4:30 pm
Staffing (1st Year / 3rd Year)	8.00 FTEs / 21.00 FTEs
Medical Director(s)	George Liu, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Will be provided by Maimonides Medical Center 1.0 miles / 7 minutes away

Character and Competence

The members of NY PACE Facility, Inc. are:

Name	Membership
George Liu, M.D.	Board Member
Matthew Haven	Board Member
Kelly McDonnell	Board Member
Yin Tung	Board Member

Dr. George Liu is the proposed Medical Director and Board Member. He is an Attending Physician at New York Presbyterian for nine (9) years. He is an Attending Physician at NYU Langone Medical Center for 22 years. He is an Attending Physician at Beth Israel Medical Center for 36 years. He was an Attending Physician at New York Downtown Hospital for 20 years. He was an Attending Physician and Medical & Endocrine Consultant at The New York Eye and Ear Infirmary for 16 years. He was a Staff Internist at Chinatown Health Clinic for five (5) years. He was a Physician Specialist at Stanford University Medical Center for two (2) years. He was a Sessions Physician in the Emergency Department for one (1) year. He was a Medical Clinic Physician for Kaiser Permanente Santa Clara Medical Center for two (2) years. He was a Medical House Physician at Gracie Square Hospital for one (1) year. He was Clinical Faculty at NYU School of Medicine for two (2) years. He was the Director of the Obesity-Endocrine Clinic of St. John's Queens Hospital for five (5) years. He received his medical degree from Weill Cornell Medical College. He completed his Internal Medicine residency at the Veteran's Administration Hospital in New York. He completed his Endocrinology fellowship at Stanford University Medical Center. He is board certified in Internal Medicine.

Matthew Haven is the Vice President of Strategy and Expansion at WelbeHealth for one (1) year. He oversees key strategic initiatives for providers of PACE, including growth planning, geographic market assessment, real estate, applications, and licensing. He is the Owner of Yonder Sky for four (4) years. He owns and manages a professional sightseeing tour operator that offers small group day tours to national parks and other attractions. He was an Independent Freelance Healthcare Management Consultant for Five (5) years. He was a consultant and advisor to executive leaders of organizations, including a senior healthcare provider, a retail-inspired specialty care clinic group, a home healthcare provider, and a substance use disorder treatment provider. He was the Finance Purchasing Project Assistant at Alixpartners. He served in a temporary contract role evaluating and managing major corporate contracts and negotiating business and legal terms with vendors. He was the Co-Founder and Vice President of

Strategy and Business Development of Gohealth Urgent Care for five (5) years. He led operations, strategy, and business development for a startup healthcare provider, including fundraising, growth planning, facility design, retail operations, team member engagement, health system partnerships, and acquisitions.

Kelly McDonnell is the Vice President and Chief of Staff to the CEO of WelbeHealth for over two (2) years. She led the company's three-year strategic plan and one-year operating plan development. She manages quarterly investor board meetings. She serves as the CEO proxy for internal and external meetings to ensure the achievement of business priorities, and she led the 2022 Objectives & Key Results process to set company-wide strategic objectives. She also oversaw key talent activities. She was Area Portfolio Leader at Kaiser Foundations Hospitals for two (2) years. She oversaw a portfolio of over 40 hospital initiatives designed to achieve performance targets in quality, care experiences, affordability, staff satisfaction, and workplace safety. She created and delivered performance improvement training to 60 hospital staff and mentored 10 improvement advisors, and launched formal committees to engage the leadership team. She oversaw the implementation of hospital-wide communication and visual tool to improve front-line engagement and facilitate goal achievement in over 20 hospital units/departments. She was the Senior Advisor of Clinical Operations of Clinical Operations and Network Team and the Direct/Associate Director of Transformation at Evolent Health for over five (5) years. She facilitated the creation, implementation, and scaling of clinical and quality programs across markets on behalf of the Senior Vice President and three Vice Presidents. She managed the annual CON strategy and the senior Vice President's direct goals related to strategic objectives. She delivered four clinical initiatives to market-based leads, collected and synthesized feedback from markets and proactively managed a \$9M budget for a 60-person team while managing team reorganization, promotions, and new hires. She also developed competency models across five job levels and three performance levels for year-end reviews.

Yin Tung is the Senior Vice President of East Coast Market Development of WelbeHealth, Inc. for over one (1) year. He oversees and is responsible for the development of the PACE programs in New York and New Jersey. He engages with regulations and consultants on bringing for-profit PACE to New York. He was the Chief Operating Officer of the Coalition of Asian American IPA for three (3) years. He was responsible for executive-level projects, including the PACE program, the Medicare plan strategic partnership, building a new imaging center, and mergers & acquisitions. He oversaw the management services for multiple IPAs and represented CAIPA MSO in CAIPA Medical Management for delegated functions development with key partners. He was responsible for the organization's profits of \$50M annually and worked with other executive staff and Board Members on business development and strategic planning. He was the Vice President of CAIPA Care, LLC for over two (2) years. He formed one of six designated Medicaid ACOs in New York State, coordinated and worked with the CAIPA Care COO on annual reporting, and led the application process for CAIPA Care to receive NYS Innovator design. He also formed CAIPA Insurance to expand its offering in commercial products, partnered with health plans to lobby the Department of Financial Services for approval of association plans, and oversaw the practice management services, a program to provide an exit for retiring physicians, for CAIPA to retain patient attribution and to reduce practice burnout by consolidating practice management. He was the Vice President of Network Management of CAIPA, Inc. for over nine (9) years. He negotiated and managed MCO contracts and quality incentive programs, reviewed and approved CAIPA downstream agreement with its providers and its policies and procedures for both the IPA and delegated credentialing process, developed a house call program to address risk adjustment for the Medicare population, and developed training programs and quick reference guides for both quality and risk adjustment. He was the Administrator in Training at Gouverneur Skilled Nursing Facility for nine (9) months. He completed an internship program mandated by the NYS DOH Bureau of Credentialing. He was responsible for learning the role and responsibility of a nursing home administrator, monitored expense and revenue; participated with the governing body, senior staff, medical staff, and department heads; reviewed and revised policies and procedures; and organized, administered, and participated in the facility Performance Improvement Program and Quality Assurance Committee. He was the Asian Program Manager/Contract Negotiator at the Metropolitan Jewish Health System for six (6) years. He was responsible for the development of an Asian program, a comprehensive provider network, and marketing strategies for the Asian community. He established an Asian provider network by contracting with key Asian Independent Practice Associations, hospitals, and ancillary services. He also negotiated risk-sharing contracts, maintained a productive

relationship with Chinese community associations, and planned outreach and marketing activities with community and health advocacy groups.

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

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

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$900,781, distributed as follows:

Renovation & Demolition	\$585,989
Design Contingency	\$58,599
Construction Contingency	\$58,599
Architect/Engineering Fees	\$137,700
Movable Equipment	\$52,978
Application Fees	\$2,000
Additional Processing Fees	<u>\$4,916</u>
Total Project Cost	\$900,781

Welbe Health, LLC will fund project costs of \$900,781 with equity. BFA Attachment B presents Welbe Health LLC's 2021 certified financial statement, which shows sufficient resources to meet the equity requirement.

Operating Budget

The applicant has submitted an operating budget for the first and third years, in 2023 dollars, 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:				
Welbe NYC*	\$481.72	<u>\$1,352,662</u>	\$250.78	<u>\$3,304,265</u>
Total Revenue		<u>\$1,352,662</u>		<u>\$3,304,265</u>
Expenses:				
Operating	\$442.72	\$1,243,162	\$239.67	\$3,157,935
Capital	<u>\$49.43</u>	<u>138,807</u>	<u>\$10.98</u>	<u>144,636</u>
Total Expenses	<u>\$492.15</u>	<u>\$1,381,969</u>	<u>\$250.65</u>	<u>\$3,302,571</u>
Net Income (Loss)		<u>(\$29,307)</u>		<u>\$1,694</u>
Total Visits		2,808		13,176

* The average visit cost will decrease as the number of enrollments into the PACE program (and D&TC visits) increases.

The following is noted related to the submitted budget:

- The assumptions in the projected operating budget come from current Welbe Health-sponsored PACE programs' operating experience, local market assumptions, and national best practices. Revenue and utilization assumptions align with the projected number of PACE program participants in Welbe Health NYC PACE, LLC's Article 44 application.
- NY Care PACE Facility Article 28 diagnostic and treatment center will solely serve participants from the Welbe Health NYC PACE, LLC's Article 44 Program of All-Inclusive Care for the Elderly (PACE). Welbe Health NYC PACE, LLC is projecting to enroll 12 participants per month until center capacity is reached. It is assumed that each participant will make an average of 3 visits to the D&TC monthly. These assumptions are based on the actual operating experience of the current California Welbe Health-sponsored PACE programs.
- The proposed reimbursement rates will be set by Welbe Health NYC PACE, LLC, based on the overall expenses for the D&TC. Welbe Health NYC PACE, LLC intends to operate the D&TC at or near a break-even margin.

- Salary expense is based upon staff compensation at Welbe Health PACE programs and input from internal recruiters. Claims expenses were collected and analyzed from 36 other PACE programs nationally.

Lease Rental Agreement

The applicant has submitted an executed lease for the proposed site. The terms are summarized below:

Date:	June 30, 2022
Premises:	14,814 square feet located at 5521 8th Avenue, Brooklyn, NY 11220
Landlord:	Golden 8 th Ave. Realty Corp.
Lessee:	Welbe Health NYC PACE, LLC
Term:	15 years. Option to extend for two (2) additional terms of 5 years.
Rental:	Rent is abated for months 1-16, starting in the 17 th month; rent is \$725,886 per year (\$49 per square foot); rent increases by 3% every 12 months, beginning in the 29 th month.
Provisions:	Tenant is responsible for maintenance, utilities, real estate taxes, and insurance.

Sub-Lease Rental Agreement

The applicant has submitted an executed sub-lease agreement for the proposed site. The terms are summarized below.

Date:	January 20, 2023
Premises:	1,915 sq. ft on the 2 nd floor of premises located at 5521 8th Avenue, Brooklyn, NY
Sub-Landlord:	Welbe Health NYC PACE, LLC
Sub-Lessee	NY PACE Facility, Inc
Term:	15 years. Option to extend for two (2) additional terms for five years.
Rental:	Rent is abated for months 1-16, starting in the 17 th month; rent is \$93,835 per year (\$49 per square foot); rent increases at 3% every 12 months, beginning on the 29 th month. Option period, the rate is based on Fair Market Rental Rate with 2% yearly increases.
Provisions:	Sub Lessee is responsible for maintenance, utilities, real estate taxes, and insurance.

The applicant has provided an affidavit stating that the lease is an arm's length agreement and the sub-lease agreement is a non-arm's length agreement. Letters from two New York State licensed realtors have been provided attesting to the rental rate being fair market value.

Administrative Service Agreement (ASA)

The applicant has provided a draft ASA; the terms are summarized below:

Facility Operator:	NY PACE Facility, Inc.
Service Provider:	Welbe Health NYC PACE, LLC
Term:	Three years, automatic 3-year renewals
Services:	Subject to the D&TC's control and oversight, General Administration, Accounting and Financial Services, Banking and Finance, Collection Services, Compliance, and Project Management.
Compensation:	\$120,000 per year

NY PACE Facility, Inc's sole and passive corporate member is Welbe Health NY PACE, LLC. The ASA provides that NY PACE Facility, Inc. retains ultimate authority, responsibility, and control in all the final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable.

Capability and Feasibility

Total project costs of \$900,781 will be met with equity from Welbe Health, LLC. The submitted budget projects a first-year net loss of \$29,307 and a third-year income of \$1,694. The Welbe Health, LLC., Chief Financial Officer has provided a letter attesting to covering the first-year operating loss. As shown in BFA Attachment B, Welbe Health, LLC, 2020-2021 consolidated financial statements, there was an

average of \$79.5M in working capital. BFA Attachment C, Welbe Health, LLC, November 30, 2022, internal financial statements show working capital at \$96.7M.

The working capital requirement is estimated at \$550,429 based on two months of third-year expenses. Working capital will be funded from Welbe Health, LLC's financial resources. As noted above, there are sufficient liquid resources to meet the total project cost and the working capital equity requirements. BFA Attachment D presents NY PACE Facility, Inc.'s Pro-forma balance sheet indicating that operations will start with \$1,451,208 in equity.

A review of BFA Attachment B and C, Welbe Health, LLC., financial statements from 2020 – through November 30, 2022, show average corporate losses of \$26.7M. Welbe Health states that corporate losses result from early investments in centralized infrastructure to serve PACE participants across multiple PACE programs. The four (4) PACE programs opened to date are now profitable on a stand-alone basis. They also state that the losses from investments in new PACE programs are consistent with their plan and budget as new PACE programs are brought to additional communities. As shown on the balance sheet dated November 30, 2022, Welbe Health had \$114.3M of cash on hand, positive working capital, and positive net assets. Welbe Health states that they only commit capital to new PACE organizations and facilities when there is adequate capital to support a new program to self-sustainability.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Organizational Chart
BFA Attachment B	Welbe Health, LLC, 2020-2021 Consolidated Financial Statement
BFA Attachment C	Welbe Health, LLC, November 30, 2022, Internal Financial Statement
BFA Attachment D	Pro Forma Balance Sheet



Project # 222250-B
Pesach Tikvah Hope Development, Inc. d/b/a Pesach Tikvah
Diagnostic and Treatment Center

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment and Construction **Acknowledged:** December 29, 2022

Executive Summary

Description

Pesach Tikvah Hope Development, Inc. (Pesach Tikvah) is seeking approval for the establishment and construction of an Article 28 Diagnostic and Treatment Center (D&TC) located at 340 Broadway, Brooklyn, (Kings County) NY 11211 to provide primary care and other medical specialties including Gastroenterology, Pediatrics, Orthopedics, Endocrinology, Cardiology, and Physical Therapy.

Pesach Tikvah currently operates an Article 31 Office of Mental Health Clinic and proposes this D&TC to provide coordinated and integrated care to its current clients as well as other residents of the community. Upon PHHPC approval, the D&TC will be known as Pesach Tikvah Diagnostic and Treatment Center.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 9,872 visits in Year One and 18,649 in Year Three. Medicaid utilization is projected at 67.02% for Year One and 67.10% for Year Three, with Charity Care at 2.00% in Year One and 1.76% for Year Three.

Program Summary

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

Financial Summary

The total project costs for Article 28 and Article 31 are estimated at \$11,285,346. Total project costs for Article 28 and Article 31 will be funded with \$1,336,098 in equity from operations, \$2,027,538 in a Statewide Health Care Facility Transformation Program Grant award, and a bank loan of \$7,921,710 at an interest rate of 6% for a fifteen-year term.

Budget	<u>Year One</u> <u>2025</u>	<u>Year Three</u> <u>2027</u>
Revenues	\$1,535,106	\$2,906,934
Expenses	<u>1,473,425</u>	<u>2,220,379</u>
Net income/(loss)	\$61,681	\$686,555

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

1. This project must be completed by **March 1, 2026**, 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 **December 1, 2024**, and construction must be completed by **December 1, 2025**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

June 29, 2023

Need Analysis

Background and Analysis

The primary service area is Kings County. The facility is within a Primary Care Health Professional Shortage Area and a Medically Underserved Area. The applicant plans to improve access to the growing minority and underserved population in this area. The following services will be provided: primary care, physical therapy, and other medical specialties, including gastroenterology, pediatrics, orthopedics, endocrinology, and cardiology.

Based on the US Census, population estimates of Kings County in 2021 were 2,641,052 and is estimated to increase to 2,844,643 by 2028. Per the applicant, within the zip code of 11211, the demographics include approximately 23% Hispanic, 4% Black, and 77% White.

According to Data USA, in 2020, 93.3% of the population in Kings County had health coverage as follows.

Employer Plans	41.1%
Medicaid	32.2%
Medicare	8.01%
Non-Group Plans	11.8%
Military or VA	0.327%

The applicant projects the following payor mix:

Projected Payor Mix		
Payor	Year One	Year Three
Commercial	13.99%	13.97%
Medicare	14.00%	13.97%
Medicaid	67.02%	67.10%
Private Pay	3.00%	3.21%
Charity Care	2.00%	1.76%

The applicant projects 9,872 visits in Year One and 18,649 in Year Three. The applicant plans to meet these numbers by integrating care of their patients with the existing Article 31 program. The increase by year three will be achieved through the promotion of and establishment of the program. Hours of operation will be Sunday through Thursday, 9:00 am -8:00 pm, and Friday, 9:00 am to 2:00 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	Kings County	New York State
All PQI's	1,014.91	993.88

Conclusion

The proposed center will provide primary care, physical therapy, and other medical specialties, including gastroenterology, pediatrics, orthopedics, endocrinology, and cardiology services to help meet the needs of its community.

Program Analysis

Project Proposal

Pesach Tikvah Hope Development Inc., an existing New York State Corporation, seeks approval to establish and construct an Article 28 diagnostic and treatment center to be located at 340 Broadway in Brooklyn (Kings County). The proposed center will provide Medical Services-Primary Care and Medical Services- Other Medical Specialties, including Gastroenterology, Pediatrics, Orthopedics, Endocrinology, Cardiology, and Physical Therapy. The Applicants seek to operate an Article 28 D&TC in order to provide coordinated and integrated care with the already established Article 31 program.

Proposed Operator	Pesach Tikvah Hope Development Inc.
To Be Known As	Pesach Tikvah
Site Address	340 Broadway Brooklyn, New York 11211 (Kings County)
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties Gastroenterology Pediatrics Orthopedics Endocrinology Cardiology Physical Therapy
Hours of Operation	Monday to Friday, 8:30 am to 5:30 pm
Staffing (1st Year / 3rd Year)	11.70 FTEs / 20.70 FTEs
Medical Director(s)	Abdalla Adam, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Expected to be provided by Woodhull Hospital 1 mile / 2 minutes away

Character and Competence

The members of Pesach Tikvah Hope Development Inc. are:

<u>Name</u>	<u>Membership Interest</u>
David Neiderman	Chairman
Zevi Steinmetz	Board Member
Naftuli Weiss	Board Member
Avigder Mendlowitz	Board Member
David Paskes	Board Member
Aron Jacobowitz	Board Member

Dr. Abdalla Adam is the proposed Medical Director. He is a Staff Psychiatrist a CitiMed for over six (6) years. He is the Medical Director and President of Empire Medical and Rehab for over four (4) years. He was a Locums at Sentara Virginia Beach General Hospital Inpatient Rehab for eight (8) months. He was a Staff Psychiatrist at MetroPain Specialist for one (1) year. He was a Staff Psychiatrist at AHAVA Medical Centers for four (4) years. He was a Staff Psychiatrist at PM&R Brooklyn Inpatient Rehab and Nursing Home Centers, Diamond Medical Associates for over six (6) years. He was the Medical Director of Amsterdam Medical Center for two (2) years. He was the Medical Director of Korongeno Medical & Rehab for over one (1) year. He was the Director of Relief and Development at the Darfur Peace and Development Organization. He received his medical degree from Khartoum University in Sudan. He completed his residency in Physical Medicine and Rehab at SUNY Stony Brook University. He is board certified in Physical Medicine and Rehab.

Aron Jacobwitz is the Vice President of Pesach Tikvah Hope Development, Inc. for over 20 years. He is the Owner of Procreative Consultants for 23 years. He provides counseling to couples and individuals in reproductive health, obstetrical outcomes, and fertility. He provides culturally sensitive training for working with the Orthodox Jewish community and explains cultural issues relating to the community.

Avidger Mendlowitz is a Board Member of Pesach Tikvah Hope Development, Inc. for almost three (3) years. He is a General Contractor at Chess Builders for over 18 years. He is responsible for the management and oversight of the employees and job sites. He is also responsible for the safety and compliance of work sites and the quality of the job that is completed.

David Neiderman is the Chairman of the Board of Pesach Tikvah Hope Development Inc. for over 20 years. He is the Executive Director of the United Jewish Organization of Williamsburg, Inc, for over 30 years. He is responsible for shaping its priorities and service strategies. He has initiated UJO legal services to help low-income families with immigration, housing, benefits, and other legal matters. He developed the immigration services division to promote family reunification and naturalization services. He planned and arranged financing for and sponsored co-development with federal, state, and city agencies to build housing units for low-income residents. He introduced job training in IT, construction, and Graphic Design to ease entry into the job market. He serves on the Brooklyn Community Board 1. He is the Executive Vice President of Rav Tov International Jewish Rescue Organization. He is the Chair of the Housing and Public Housing Committee for the Rav Tov International Jewish Rescue Organization.

David Paskes is a Board Member of Pesach Tikvah Hope Development, Inc. for almost two (2) years. He is the Vice President of Always Forwarding for 26 years. He makes decisions and has oversight of the company. He also has interactions with partners overseas.

Zevi Steinmetz is a Board Member of Pesach Tikvah Hope Development, Inc for almost 20 years. He is the CEO of Complete Development, Inc for over 15 years. He provides project management and ownership representation assisting in the development, management, and coordination of large-scale construction projects from initiation to occupancy. He obtained Human Resources and finance experience as the company built out the nine (9) employee team and experienced significant growth over 17 years. He has also been a Board Member of UJO for over 15 years and has held the position of Treasurer.

Naftuli Weiss is a Board Member of Pesach Tikvah Hop Development, Inc. for over 20 years. He is the Executive Director of the Jewish Center for Special Education School for over 30 years. He is responsible for oversight of the institution.

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

Total project costs for the Article 28 and Article 31 components are \$11,285,345, which is for the building acquisition, new construction, and moveable equipment, further broken down as follows:

	<u>Article 28</u>	<u>Article 31</u>	<u>Total</u>
Building Acquisition	\$487,500	\$487,500	\$975,000
New Construction	3,482,969	4,155,884	\$7,638,853
Design Contingency	348,297	415,588	\$763,885
Construction Contingency	174,148	207,794	\$381,942
Planning Consultant Fees	25,000	25,000	\$50,000
Architect/Engineering Fees	270,522	244,386	\$514,908
Other Fees (Consultant)	37,500	37,500	\$75,000
Moveable Equipment	300,992	26,167	\$327,159
Financing Costs	82,082	80,951	\$163,033
Interim Interest Expense	168,908	195,078	\$363,986
CON Fee	2,000	0	\$2,000
Additional Processing Fee	<u>29,579</u>	<u>0</u>	<u>\$29,579</u>
Total Project Cost	\$5,409,497	\$5,875,848	\$11,285,345

The Bureau of Architectural and Engineering has indicated that the reimbursable project cost is \$5,409,497, which is only for the Article 28 portion of this project.

The total financing plan for the Article 28 component and Article 31 components are as follows:

Equity	\$1,336,097
Statewide Health Care Facility Transformation Program Grant	\$2,027,538
Bank Loan (6% interest rate for a fifteen-year term)	<u>\$7,921,710</u>
Total	\$11,285,345

The applicant has submitted a Member Appraisal Institute (MAI) appraisal for the building valued at \$2,000,000. As shown, the amount recorded on Schedule 8B is the lower of cost or market.

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>Year Three</u>	
	<u>2025</u>		<u>2027</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$165.00	\$162,855	\$165.00	\$307,725
Commercial MC	\$127.50	\$50,235	\$127.50	\$95,115
Medicare FFS	\$150.00	\$177,750	\$150.00	\$335,700
Medicare MC	\$125.00	\$24,625	\$125.00	\$46,625
Medicaid FFS	\$199.43	\$39,288	\$199.43	\$74,387
Medicaid MC	\$159.54	\$1,024,113	\$159.54	\$1,941,172
Private Pay	\$190.00	<u>\$56,240</u>	\$190.00	<u>\$106,210</u>
Total Revenues		\$1,535,106		\$2,906,934
Expenses:				
Operating	\$90.84	\$896,743	\$89.59	\$1,670,745
Capital	<u>\$58.42</u>	<u>\$576,682</u>	<u>\$29.47</u>	<u>\$549,634</u>
Total Expenses	\$149.25	\$1,473,425	\$119.06	\$2,220,379
Excess Revenues		\$61,681		\$686,555
Utilization: (Visits)		9,872		18,649

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

- Expense and utilization assumptions are based on the actual experience of the patients at OMH clinics and the identifiable needs for Article 28 diagnostic and treatment center services for the projected population.
- Medicaid fee-for-service rates were based on the base rate for the APG for a downstate center plus the cost of approved capital costs.
- Medicaid managed care rates were based on a percentage of the APG cost base rate with capital included.
- Medicare fee for services rates was based on the experience of other Article 28 diagnostic and treatment centers and the Medicare part B schedule.
- Medicare managed care rates were based on a percentage of the fee-for-service rates.
- Commercial insurance and private pay rates were based on a review of other Article 28 D&TC's AHCF-1 (Medicaid cost report) for these payers.

Utilization, detailed by payor source, during the first and third years, are as follows:

	<u>Year One</u> <u>2025</u>	<u>Year Three</u> <u>2027</u>
Commercial FFS	10.00%	10.00%
Commercial MC	3.99%	3.97%
Medicare FFS	12.00%	12.00%
Medicare MC	2.00%	1.97%
Medicaid FFS	2.00%	2.00%
Medicaid MC	65.02%	65.10%
Private Pay	3.00%	3.21%
Charity Care	2.00%	1.76%

Building Acquisition

The applicant has submitted an executed building acquisition, summarized below:

Date	August 7, 2017
Seller	1344 Realty, LLC
Purchaser	Pesach Tikvah Hope Development, Inc.
Purchase Price	\$975,000
Payment of Purchase Price	\$155,000 equity and \$780,000 Loan Proceeds

Capability and Feasibility

Total project costs of \$11,285,345 for the Article 28 component and the Article 31 component of this project will be met with \$1,336,097 in equity from operations, \$2,027,538 in a Statewide Health Care Facility Transformation Program II Grant award, and a bank loan of \$7,921,710 at an interest rate of 6% for a fifteen-year term.

The working capital requirement, estimated at \$370,063, is based on two months of third-year expenses. The working capital requirements will be funded with \$185,031 through equity from Pesach Tikvah Diagnostic and Treatment Center operations and the remaining \$185,032 with a loan. A letter of interest has been submitted from Hudsonshine Capital indicating their interest in exploring financing with the applicant at an interest rate of 6% for a three-year term. Presented as BFA Attachment A are the June 30, 2022, certified financial statements of Pesach Tikvah Diagnostic and Treatment Center, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates net income of \$61,681 and \$686,555 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for primary care services. The budget appears reasonable. In the fiscal year ending June 30, 2022, certified financial statements of Pesach Tikvah Hope Development, Inc. show the entity had a positive working capital position and a positive net asset position. The entity incurred a loss of \$348,273 through June 30, 2022. Driven by a

change in senior management, a change in their electronic health records and billing software, and weakness in the aftermath of COVID-19. To improve operations under a new executive director, the entity is focusing on the bottom line and weeding out non-performing programs, and focusing its energies on profitable programs.

Presented as BFA Attachment B is July 1, 2022, through December 31, 2022, internal financial statements of Pesach Tikvah Hope Development. As shown, the entity had a positive working capital position and a positive net asset position from 7/1/2022 through 12/31/2022, and the entity incurred a net loss of \$251,414 during that time.

Conclusion

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended

<h2>Attachments</h2>	
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BFA Attachment A	June 30, 2022, Certified Financial Statements of Pesach Tikvah Hope Development, Inc.
BFA Attachment B	July 1, 2022, through December 31, 2022, Internal Financial Statements of Pesach Tikvah Hope Development, Inc.



Project # 222258-B
Association to Benefit Children d/b/a ABC Little Clinic

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** January 30, 2023

Executive Summary

Description

Association to Benefit Children (ABC), an existing not-for-profit, seeks approval to establish and construct Little Pediatric Health Clinic d/b/a ABC Little Clinic (The Clinic), an Article 28 Diagnostic & Treatment Center located at 1841 Park Avenue, NY 10035 (East Harlem). The Clinic will focus on primary and preventive health care.

The Clinic will be on the 2nd floor of an ABC-owned and operated facility that also has early childhood educational and school-aged after-school and summer day camp programming, as well as an Article 31 children's outpatient mental health clinic. The Clinic will serve a high-need community centered in East Harlem and emanating out to Northern Manhattan and the South Bronx. At full capacity, the clinic is projected to serve over 2,000 children annually.

Gerald Loughlin, M.D., will serve as the Medical Director. In addition, the proposed center has submitted a letter of interest for a Transfer and Affiliation Agreement for emergency and backup services with New York Presbyterian Hospital, which is 5 miles/20 minutes away.

OPCHSM Recommendation
Contingent Approval

Need SummaryThe applicant projects 10,224 visits in Year One and 11,461 in Year Three with Medicaid at 71.72% and Charity Care at 26.28% by Year Three.

Program Summary

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

Financial Summary

Total project costs of \$258,786 will be met with equity from ABC Clinic, Inc.

Budget:	<u>Year One</u>	<u>Year Three</u>
	<u>(2024)</u>	<u>(2026)</u>
Revenues:	\$938,287	\$991,365
Expenses:	<u>925,352</u>	<u>981,713</u>
Net Income:	\$12,935	\$9,652

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed photocopy of the Certificate of Amendment to the Certificate of Incorporation, acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **September 29, 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 **December 29, 2023**, and construction must be completed by **June 29, 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

June 29, 2023

Need Analysis

Background and Analysis

The primary service area is Northern Manhattan and the South Bronx, mainly zip code 10035. The population estimate for New York County was 1,596,273 in 2022, and Bronx County was 1,379,946 for the same period per US Census Bureau population estimate data. Per projection data from the Cornell Program on Applied Demographics, the New York County population is estimated to increase to 1,720,649, and the Bronx population is expected to increase to 1,590,942 by 2028 or 7.79% and 15.29%, respectively.

According to Data USA, the population of New York County and Bronx County had health coverage as follows:

	New York County	Bronx County
Uninsured	5.78%	8.04%
Employer Plans	51.5%	30.8%
Medicaid	20.5%	41.8%
Medicare	9.7%	6.79%
Non-Group Plans	12.2%	12.1%
Military or VA	0.315%	0.417%

The applicant projects the following payor mix:

Projected Payor Mix for Outpatient Services		
Payor	Year One	Year Three
Medicaid	76.15%	71.72%
Private Pay	2.00%	2.00%
Charity Care	21.85%	26.28%

The proposed location is in a Medically Underserved Area and a Health Professional Shortage Area for Primary Care, Dental, and Mental Health. The applicant projects 10,224 visits in Year 1 and 11,461 in Year 3 of operations.

The applicant will provide primary care services at this clinic and, working with the existing Article 31, they will focus on children 0-17 years old who have developmental disabilities, mental health needs, and linguistic and cultural barriers.

The proposed center will operate five days a week, Monday, Wednesday, and Friday, 8 am to 7 pm, and Tuesday and Thursday, 11 am to 7 pm. Saturdays will be as needed by appointment only.

Prevention Quality Indicators 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 PDI rates, which are specific to the overall condition of the pediatric population.

Pediatric Hospital Admissions per 100,000 People for Overall PQIs				
PDI Rates: 2020	Zip Code: 10035	New York County	Bronx County	New York State
All PDIs	87.80	115.38	239.75	97.73

Conclusion

Approval of this project will allow the applicant to provide primary care services to children 0-17 years of age.

Program Analysis

Project Proposal

Association to Benefit Children, an existing not-for-profit, seeks approval to establish an Article 28 Little Pediatric Health Clinic d/b/a ABC Little Clinic to be located at 1814 Park Avenue in New York (New York County). This facility will certify Medical Services-Primary Care and focus on primary and preventative health care. This facility will be co-located with an Article 31 pediatric outpatient mental health clinic and dental clinic.

Proposed Operator	Association to Benefit Children
To Be Known As	ABC Little Clinic
Site Address	1841 Park Avenue New York, New York 10028 (New York County)
Specialties	Medical Services-Primary Care
Hours of Operation	Monday to Friday Three days a week from 8 Am to 4 pm Two days a week from 11 am to 7 pm Saturdays, 9 am to 1 pm
Staffing (1st Year / 3rd Year)	6.6 FTEs / 6.6 FTEs
Medical Director(s)	Gerald Loughlin, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Expected to be provided by New York Presbyterian 5 miles / 20 minutes

Character and Competence

The members of the Association to Benefit Children are:

<u>Name</u>	<u>Title</u>
Tom Styron	Chairperson
Rebecca Banyasz	Director
Mitchell Bernard	Director
Marian Wright Edelman	Director
Hon. Helen Freedman	Director
Timothy Goodell	Director
Karenna Gore	Director
Stephen Graham	Director
Blanche Johnson	Secretary
Meredith Kane	Director
Joan Lacagnina	Treasurer
Gerald Loughlin	Director
Adama Bah	Director
Amie Nuttall	Director
Michael Nutter	Director
Basil Smikle	Director
Anil Stevens	Director
Rose Styron	Director
Dermot Sullivan	Director
Michael Wolitzer	Director
Peter Wu Buchenholz	Corp. Vice President
Michael Lewis	Corp. Vice President
Gretchen Buchenholz	Executive Director
Eri Noguchi	Assoc. Exec. Director
Matthew Manger	CFO
Marie Nguyen	Chief Program Officer

Adama Bah is an Emergency Medical Technician at Senior Care for three (3) years. He performs basic physical exams, assesses patient trauma levels, and administers oxygen. He transports patients to the proper medical facility. He was a Residential Habilitation Counselor at AHRC for five (5) years. He was responsible for meeting the needs of the individual receiving services in skills training and development, socialization, recreation, leisure activities, and utilization of community resources. He was the Program Director of Pan African CDI for five (5) years. He initiated and established goals for programs according to the strategic objectives of the organization. He planned the involving deadlines, milestones, and processes.

Rebecca Banyasz retired in 2008 as the Head Teacher of the Association to Benefit Children.

Mitchell Bernard is the Chief Counsel for the National Resources Defense Council for 35 years. He manages the legal program for non-profit law.

Gretchen Buchenholz is the Founder and Executive Director of the Association to Benefit Children for 36 years. She has created many programs. She was the previous Founder and Director of the New York State Committee Against Hunger and the Founder and Director of The Hunger Committee National Coalition for the Homeless for one (1) year. She was the Founder and Director of the Yorkville Soup Kitchen for one (1) year. She was an Instructor in the Sociology Department at Hunter College for two (2) years.

Peter Wu-Buchenholz is the Adjudication Counsel for the New York State Division of Human Rights for Over 22 years. He reviews recommended orders after hearings. He prepares final orders, advises the Commissioners regarding cases, drafts, and issues alternate proposed orders and remands when record evidence fails to support the recommended order. He was a Senior Attorney for 10 months. He enforced state human rights laws protecting against discrimination. He was the Assistant Attorney General of the Labor Bureau in the New York State Department of Law for over one (1) year. He represented the Department of Labor and Workers Compensation Board on appeal. He wrote briefs and engaged in oral arguments in Article 78 appeals. He was the Legislation Project Coordinator at Voices for Immigrant Justice for five (5) months. He researched and drafted legislative proposals to effect changes to provisions of the Illegal Immigration Reform and Immigrant Responsibilities Act of 1996, including governing expedited removal of asylum seekers, affidavits of support, and bars to reentry. He was a Legal Intern at Main Street Legal Services for nine (9) months. He assisted clients seeking citizenship, permanent residency, and political asylum. He was a Pro Se Intern at the United States Court of Appeals for the Second Circuit for eight (8) months. He researched and analyzed substantive issues in pending cases involving sua sponte dismissal, requests for in forma pauperis status, requests for counsel, Anders motions, and 28 USC 1983 civil rights complaints.

Marian Edelman is the Founder and President Emerita for the Children's Defense Fund for 50 years. She oversees the budget, staffing, priorities, and mission of the organization. She directs the long-range goals and policies, advocates for disadvantaged Americans, and works with Congress to overhaul foster care, support adoption, improve childcare, and protect children who are homeless homes, disabled, abused, or neglected.

Helen Freedman retired on October 31, 2014. She is a board member of the Association of the Benefit Children. She oversees the Article 31 outpatient mental health clinics and other community-based pediatric health screening and monitoring services, as well as other health support, services, and care in New York City.

Timothy Goodell is the Executive Vice President, General Counsel, Corporate Secretary, and Chief Compliance Officer of Hess Corporation for 14 years. He is responsible for leading legal functions, corporate aviation, government and external affairs, and compliance and security. He was the Global Co-Head of the Mergers and Acquisitions Practice Group and a Member of the Partnership Committee of White & Case, LLP for 24 years. He advised public and private corporations on general corporate governance matters.

Karenna Gore is the Founder and Director of the Center for Earth Ethics at Union Theological Seminary for over seven (7) years. She was the Director of the Union Forum at the Union Theological Seminary for two (2) years. She is an Author and Speaker for eight (8) years. She was the Director of Community Affairs for the Association to Benefit Children for two (2) years. She participated in the Gore 2000 Presidential Campaign Youth Outreach Chair. She was an Editorial Assistant at Slate Magazine for one (1) year. She worked at PRISA for one (1) year.

Blanche Johnson retired in 1995. She served as the Director of the Manhattan Borough President's Youth Commission for two (2) years. She conducted hearings and recommended actions to be taken by New York City to empower and educate youth in all communities. She was Deputy Director of the Mayor's Office for People with Disabilities for three (3) years. She increased access to transportation, public access, schools, health care, employment, and housing. She was a member of the Board for Independent Living of New York for 22 years. She currently serves as a member of the Board of Directors of the Bigs and Littles Mentoring NYC and a member of the Board of Directors of the Association to Benefit Children for over 12 years.

Meredith Kane is a Real Estate and Pro Bono Attorney at Paul, Weiss, Rifkind, Wharton, & Garrison for 12 years. She retired in December 2020.

Joan Lacagnina retired in February 2022. She is a Board Member of the Association to Benefit Children. She is responsible for overseeing the Article 31 mental health clinics and other community-based health screenings as well as other mental health support, services, and care in New York City.

Michael Lewis is a Professor at the Silberman School of Social Work at Hunter College for five (5) years. He was an Associate Professor at the Silberman School of Social Work for nine (9) years. He is an Associate Professor at the CUNY Graduate Center for 11 years. He was an Associate Professor at Stony Brook University School of Social Welfare for 14 years.

Gerald Loughlin, M.D., serves on the Executive Committee of Weill Cornell Physician's Organization for over 15 years. He was on the Executive Committee of the Weill Cornell New York Presbyterian Cancer Center for seven (7) years. He was the Chair of the Practice Operations Committee for 12 years. He was the Senior Associate Dean for International Clinical Planning at Weill Cornell for two (2) years. He was the President of the Medical Board for New York Presbyterian Hospital for one (1) year. He was the Pediatrician in Chief at Weill Cornell Medical Center for eight (8) years. He was the Director of the Department of Pediatrics Clinical Practice Association for five (5) years. He was the Co-Director at Gambriell Bronchoscopy Laboratory at Johns Hopkins University School of Medicine for four (4) years. He was the Director of Pediatric Respiratory Therapy for three (3) years. He was the Director of the Intermediate Care Program at Johns Hopkins Children's Center for two (2) years. He was the Director of the Pediatric Sleep Disorders Center at Johns Hopkins University School of Medicine for 10 years. He was the Associate Director of the Pediatric Clinical Research Unit at Johns Hopkins University School of Medicine for eight (8) years. He was the Co-Director of the Cystic Fibrosis Center at Johns Hopkins University School of Medicine for four (4) years. He was the Director of the Pediatric Pulmonology Physiology Laboratory at the University of Florida College of Medicine for seven (7) years. He was the Director of the Phase B Curriculum in the Department of Pediatrics at the University of Florida College of Medicine for four (4) years. He was a Pulmonary Consultant at the Large Animal Veterinary Hospital at the University of Florida School of Veterinary Medicine for four (4) years. He was the Director of the Cystic Fibrosis Center at the University of Florida for two (2) years. He was the Associate Director and Director of Pediatric Pulmonology at the University of Florida for seven (7) years. He received his medical degree from the University of Rochester Medical School. He completed his Pediatrics Residency and Pulmonology Fellowship at Arizona Medical Center.

Matthew Manger is the Chief Financial Officer of the Association to Benefit Children for 19 years. He directs all financial management, including preparing all financial statements, financial forecasts, and budgets. He oversees all general accounting functions, administers all financial management systems, and maintains a skilled accounting and finance team. He works directly with the fundraising department and the Chief Program Officer. He is the Principal of MM Financial Consulting for 19 years. He engages with small businesses and not-for-profits to improve efficiency through enhanced financial processes. He assists in financial operations directly or provides key insights to senior management. He prepares

financial reports, analyses, and cost reports. He was the Controller of Safe Space NYC, IC f for four (4) years. He directed financial management functions, including the preparation of all financial statements, financial forecasts, and budgets. He oversaw general accounting functions and annual audits, and prepared cost reports. He worked directly with Fundraising and Grant Writing and managed Maintenance and MIS departments. He was the Assistant Controller of Lincoln Hall for one (1) year. He prepared monthly financial statements for senior management, performed all payroll processes, and prepared agency budget and cost reports. He was solely responsible for the annual audit. He was a Trading Desk at Bear Sterns for two (2) years. He carried out equity research and analysis and tracked key market indicators while assisting in portfolio development and evaluation.

Marie Nguyen is the Director of Programs of the Association to Benefit Children for 17 years. She is responsible for contract management, program monitoring, program development, staff development and training, grant writing, and program evaluation for youth and families. She is a Lecturer in the Non-Profit Management Certificate Program at CUNY Hostos Community College for 14 years. She instructs students on the techniques of successful grant writing. She also mentors and provides guidance on not-for-profit business practices. She was the Site Coordinator of the After School Corporation for one (1) year. She administered and developed policies and practices for science-based demonstration projects. She maintained and monitored school-based resources, cultural partners, and onsite personnel. She was a Social Work Intern at the Association to Benefit Children Central Office for 10 months. She collaborated on grant writing, program evaluation reports, and program monitoring. She developed and co-facilitated weekly group therapy sessions. She was a Social Work Intern at North General Hospital Addiction Treatment Center for eight (8) months. She provided individual psychotherapy and cofacilitated individual psychoeducational group therapy. She conducted intake assessments and provided referrals to community partners. She was the Program Director at Francisco Middle School Expanded Learning Program for over one (1) year. She was the Senior Children's Coordinator at the Haven Family House for one (1) year.

Eri Noguchi is the Associate Executive Director of the Association to Benefit Children for 29 years. She oversees the general operation of the not-for-profit and programs, including early childhood centers, youth development, supportive housing, child welfare, and mental health services. She is responsible for program development, monitoring, evaluation and research, budgetary oversight, quality assurance, and government and community relationships. She was the Social Services Coordinator of 34th Street Partners for two (2) years. She ran the outreach program serving homeless individuals. She was the Assistant to the Executive Director of Grand Central Partnerships for over one (1) year. She carried out general grant management responsibilities. She was a Social Work Intern at the NYC Department of Housing Preservation and Development for eight (8) months. She is an Adjunct Assistant Professor at the Columbia University School of Social Work for 29 years. She is an Adjunct Assistant Professor at Roosevelt House Policy Institute at Hunter College for seven (7) years. She is an Adjunct Assistant Professor at the Silberman School of Social Work for four (4) years. She was an Assistant Adjunct Professor at SUNY Stonybrook School of Social Welfare for one (1) year.

Amie Nuttal retired in 2012. She is on the Board of Directors of the Association to Benefit Children. She was formerly involved in several non-profit organizations focused on the education of New York City youth in lower-income neighborhoods. She was the Director of Development at The Beginning with Children Foundation and The Learning Project. She worked at the New York City Investment Fund. She liaised between the Fund Board and potential organizations to be funded

Michael Nutter is a Professor of Professional Practice in Urban and Public Affairs at the David N. Dinkins School of International and Public Affairs for seven (7) years. He is a Political Commentator on CNN for seven (7) years. He was an Executive Fellow in Leadership at the Institute for Strategic Leadership for one (1) year. He was the Mayor of Philadelphia for eight (8) years. He was a Member of the Philadelphia City Council 4th District for 14 years. He is a Senior Advisor for The Atlas Marketplace, Co. for six (6) years. He is an Advisor for Instate Partners for Dentons for seven (7) years. He was the Chair of the Mayor's Advisory Council Airbnb for one (1) year. He was a Senior Fellow and Advisor to the Dean of the Harris School of Public Policy at the University of Chicago for six (6) years. He is a Member of the Board of the Lincoln Land Institute for six (6) years. He is a Non-resident Senior Executive Fellow at the School of Social Policy and Practice at the University of Pennsylvania for six (6) years. He is an Independent

Board Member of Conduent Corp. for six (6) years. He is an Advisor for Novele for seven (7) years. He is a Senior Fellow of the Metropolitan Policy Program at The Brookings Institution for six (6) years.

Anil Stevens is a Partner and Portfolio Manager at Interval Partners, LP, for over eight (8) years. He is responsible for managing capital for long and short-equity funds. His focus is on the financial and industrial sectors. He was previously a Portfolio Manager at Parameter Capital.

Rose Styron retired in 2012. She was a Founding Member and Board Member of Amnesty International USA for 42 years. She is a Board Member of the Academy of the American Poets, the Association to Benefit Children, The Brain and Creativity Institute, the Faculty of Arts and Sciences, and the Council of Foreign Relations.

Tom Styron is an Associate Professor in the Department of Psychiatry at Yale University for 18 years. He was previously an Assistant Professor for six (6) years. He was a Postdoctoral Fellow in the Division of Mental Hygiene at Yale University for two (2) years. He was a Predoctoral Fellow at the Connecticut Mental Health Center Department of Psychiatry at Yale University for one (1) year. He is the Executive Director of Community Services Network for 20 years. He is the Director of the Psychology Training Program for 23 years. He was the Director of Training and Clinical Administration at Yale for two (2) years. He was the Administrative Director of Managed Service Systems of South-Central Connecticut for three (3) years. He was the Housing resources Director of Managed Service System of South-Central Connecticut for one (1) year. He was the Executive Director of the Obsessive-Compulsive Foundation for one (1) year. He was the Vice President and Director of Services for H.E.L.P. Inc. for one (1) year. He was the Co-founder and Executive Director of the Association to Benefit Children for five (5) years. He was the Co-Director of the National Coalition for the Homeless, Inc. for five (5) years.

Dermot Sullivan is a Partner at Bryan Cave for 11 years. He is an Employment Law Counselor and litigator.

Michael Wolitzer is the Head of the Investment Funds Practice at Simpson Thacher & Bartlett, LLP for 35 years. He is a Member of the Editorial Board of the PLC Cross-border Private Equity Handbook and a Board Member of the Association to Benefit Children.

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

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

Conclusion

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

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and moveable equipment is distributed as follows:

Renovation & Demolition	\$122,250
Design Contingency	10,000
Construction Contingency	10,000
Planning Fees	8,000
Architect /Engineering Fees	17,500
Construction Manager Fees	12,500
Other Fees	7,563
Moveable Equipment	67,568
CON Fee	2,000
Additional Processing Fee	<u>1,405</u>
Total Project Cost	\$258,786

Operating Budget

The applicant has submitted their first and third-year operating budget in 2023 dollars, as shown below:

	<u>Year One</u> <u>2024</u>		<u>Year Three</u> <u>2026</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Medicaid FFS	\$118.95	\$36,484	\$118.95	\$40,862
Medicaid MC	\$118.95	889,641	\$118.95	936,882
Private Pay	\$59.48	12,162	\$59.48	13,621
Total Revenue		\$938,287		\$991,365
Expenses:				
Operating	\$90.07	\$920,848	\$85.26	\$977,209
Capital	<u>.44</u>	4,503	<u>.39</u>	4,504
Total Expenses	<u>\$90.51</u>	<u>\$925,352</u>	<u>\$85.65</u>	<u>\$981,713</u>
Net Income		<u>\$12,935</u>		<u>\$9,652</u>
Visits		10,224		11,461
Cost/Visit		\$90.51		\$85.66

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

	<u>Year One</u> <u>2024</u>		<u>Year Three</u> <u>2026</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid FFS	307	3%	344	3%
Medicaid MC	7,479	73.15%	7,876	68.72%
Private Pay	204	2%	229	2%
Charity Care	<u>2,234</u>	<u>21.85%</u>	<u>3,012</u>	<u>26.28%</u>
Total	10,224	100%	11,461	100%

The following is noted concerning the submitted revenues/expense budgets and utilization:

- Utilization is based on centralized service with the existing Article 31 outpatient mental health clinic experience projected on similar experiences due to the same demographics.
- Years One and Three visits are for primary care visits, and revenues are based on APG-posted DOH rates for stand-alone clinic visits.

- Year One and Three expenses are based on similar rates that are currently being utilized in the Article 31 practice, which include wages, supplies, benefits, etc.
- Medicaid Revenues Rates are based on actual rates expected for services performed using the APG rates published by the Department for freestanding clinics.
- Expenses for Year One and Year Three are based on costs from Article 31 current operations, where they also employ similar types of administrative costs. Year Three anticipates a 6% salary increase and a 3% increase in other operating costs.

Capability and Feasibility

Total project costs of \$258,786 will be met with equity from ABC. The working capital requirement, estimated at \$163,619, based on two months of third-year expenses, will be funded with equity from ABC's operations. Attachment A shows sufficient equity to cover the working capital need. The submitted budget projects a net income of \$12,935 and \$9,652 during Year One and Year Three, respectively. The budget appears reasonable.

BFA Attachment A, ABC and Affiliate's 2020-2021 Certified Financial Statements show the entity maintained positive working capital and a positive net asset position in both years. The entity had a net operating income of \$1,497,774 and a net loss of (\$212,423) in 2020 and 2021, respectively. The loss during 2021 was due to the impacts of COVID on operations.

BFA Attachment B, ABC and Affiliate's 2022 Unaudited Financial Statements shows a positive working capital and net asset position. The entity experienced a loss of (\$7,481) from operations. The 2/28/2023 Internal Financial Statements show a positive working capital and net asset position. The entity experienced an operating loss of \$299,362 for the period. However, after an unrealized gain on investments of \$477,257, the entity shows a \$177,895 net asset position.

BFA Attachment C is the organizational chart for Association to Benefit Children and Affiliates.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	(ABC and Affiliate) - Certified Financial Statement for 2020-2021
BFA Attachment B	(ABC and Affiliate) - 2022 Full Fiscal Year unaudited and 2023 Internal F/S 7/1/22 through 2/28/2023
BFA Attachment C	Organizational Chart - Association to Benefit Children and Affiliates



Project # 222274-B
Modern Associates, LLC d/b/a Dr. K Medical Center

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment and Construction **Acknowledged:** January 30, 2023

Executive Summary

Description

Modern Associates, LLC d/b/a Dr. K Medical Center, a New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to provide Primary Medical Care and Other Medical Specialties. Other Medical Specialties include Internal Medicine, Neurology, Ophthalmology, Physical Therapy, Occupational Therapy, Cardiology, Pain Management, Psychiatry and Psychology, Pulmonology, Gastroenterology, Orthopedics, and Endocrinology. This conversion of a private practice proposes to serve primarily Rego Park and Forest Hills, as well as other areas of surrounding Queens County.

The applicant will lease space on the first floor of an existing one-story retail building at 63-18 Austin Street, Rego Park. The site will include six (6) exam rooms and the requisite support areas.

The sole operator of Modern Associates, LLC is Dmitriy Kolesnik, M.D., who will also act as the Medical Director. He is board certified in Psychiatry and Neurology. The applicant will enter into a Transfer and Affiliation Agreement for backup and emergency services with Northwell Forest Hills Hospital, 1 mile (5 minutes travel time) from the Center.

OPCHSM Recommendation
Contingent Approval

Need Summary
The applicant projects 9,980 procedures in Year One and 14,151 in Year Three with 57% Medicaid and 2% Charity Care in both years.

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 \$758,110 will be funded by member equity of \$75,811, with the remaining \$682,299 balance being financed by a 10-year, 6% interest loan through Hudsonshine Capital.

Budget:	<u>Year One</u>	<u>Year Three</u>
	<u>2024</u>	<u>2026</u>
Revenues	\$1,579,856	\$2,240,266
Expenses:	<u>1,316,750</u>	<u>\$1,937,491</u>
Gain/(Loss)	\$263,106	\$302,775

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed loan commitment acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **October 1, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **January 1, 2024**, and construction must be completed by **July 1, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. 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

June 29, 2023

Need Analysis

Background and Analysis

The proposed service area is Queens County, with an emphasis on Forest Hills/Rego Park and surrounding areas. The population of Queens County in 2022 was 2,278,029, according to the most recent US Census Bureau data. The population of the county is estimated to increase to 2,544,231 by 2028 per projection data from the Cornell Program on Applied Demographics, an increase of 11.7%. The NYC Community Health Profile data shows the following demographics for Rego Park and Forest Hills 50% White, 31% Asian, 15% Latino, and 3% Black.

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

Employee plans	43.2%
Medicaid	25.9%
Medicare	9.8%
Non-group plans	10.3%
Military or VA plans	0.302%

The number of projected procedures is 9,980 in Year One and 14,151 in Year Three. The projected payor mix includes 21% Medicare, 57% Medicaid, and 2% Charity Care in Year 1 and Year 3 of operations. The applicant is committed to providing services to all patients needing care, regardless of their ability to pay or the source of payment.

The other medical specialties the center proposes include internal medicine, neurology, ophthalmology, physical therapy, occupational therapy, cardiology, pain management, psychiatry, psychology, pulmonology, gastroenterology, orthopedics, and endocrinology,

The center's hours will be reflective of the needs of the community, including evening hours to accommodate working parents and school children. The hours of operation of the program will be from Monday through Thursday will be from 9:00 AM to 8:00 PM, and on Friday from 9:00 AM to 5:00 PM, and will be adjusted as needed to better reflect the needs of the community.

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 PQI rates for 2020 related to this application:

PQI Name	Observed Rate per 100,000 Adults Zip Code 11374	Observed Rate per 100,000 Adults Queens County	Observed Rate per 100,000 Adults New York State
Diabetes Short-Term Complications	60.34	38.17	70.6
Diabetes Long-Term Complications	95.7	49.07	106.05
Chronic Obstructive Pulmonary Disease or Asthma	173.61	106.12	243.83
Hypertension	117.23	77.39	62.52
Heart Failure	310.38	261.72	336.22
Bacterial Pneumonia	65.47	57.25	105.13
Uncontrolled Diabetes	38.17	46.22	44.81
Urinary Tract Infections	111.77	84.17	94.99
Asthma in Younger Adults	19.36	0	27.6

PQI Name	Observed Rate per 100,000 Adults Zip Code 11374	Observed Rate per 100,000 Adults Queens County	Observed Rate per 100,000 Adults New York State
Lower-Extremity Amputation among Patients with Diabetes	29.34	8.18	29.16
Prevention Quality Overall Composite	169.02	149.64	200.12

Conclusion

Approval of this project will allow for expanded access to primary care, other medical specialties, occupational therapy, and physical therapy services for residents of Queens County.

Program Analysis

Project Proposal

Modern Associates LLC, an existing New York State Limited Liability Company, seeks approval to convert a PC practice for the establishment and construction of an Article 28 diagnostic and treatment center to be located at 63-18 Austin Street in Rego Park (Queens County). The proposed center will provide Medical Services-Primary Care and Medical Services- Other Medical Specialties, including Neurology, Ophthalmology, Cardiology, Pain Management, Psychiatry, Psychology, Pulmonology, Gastroenterology, Orthopedics, Endocrinology, Physical Therapy, and Occupational Therapy.

Proposed Operator	Modern Associates LLC
To Be Known As	Dr. K Health Center
Site Address	63-18 Austin Street Rego Park, New York 11374 (Queens County)
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties Neurology Ophthalmology Cardiology Pain Management Psychiatry Psychology Pulmonology Gastroenterology Orthopedics Endocrinology Physical Therapy Occupational Therapy
Hours of Operation	Monday to Thursday, 9:00 am to 8:00 pm, and Friday, 9:00 am to 5:00 pm
Staffing (1st Year / 3rd Year)	14.40 FTEs / 23.10 FTEs
Medical Director(s)	Dmitriy Kolesnik, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Northwell Health/Forest Hill Hospital 1 mile / 5 minutes

Character and Competence

The sole member of Modern Associates LLC is:

Name	Ownership Interest
Dmitriy Kolesnik, M.D.	100.00%

Dr. Dmitriy Kolesnik is the proposed sole Owner and proposed Medical Director. He is a Staff Psychiatrist at CitiMed for over six (6) years. He is the Medical Director and President of Empire Medical and Rehab for over four (4) years. He was a Locums at Sentara Virginia Beach General Hospital Inpatient Rehab for eight (8) months. He was a Staff Psychiatrist at MetroPain Specialist for one (1) year. He was a Staff Psychiatrist at AHAVA Medical Centers for four (4) years. He was a Staff Psychiatrist at PM&R Brooklyn Inpatient Rehab and Nursing Home Centers, Diamond Medical Associates for over six (6) years. He was the Medical Director of Amsterdam Medical Center for two (2) years. He was the Medical Director of Korongeno Medical & Rehab for over one (1) year. He was the Director of Relief and Development at Darfur Peace and Development Organization. He received his medical degree from Khartoum University in Sudan. He completed his residency in Physical Medicine and Rehab at SUNY Stony Brook University. He is board certified in Physical Medicine and Rehab.

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

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$758,110, broken down as follows:

Renovation & Demolition	\$360,500
Design Contingency	36,050
Construction Contingency	36,050
Planning Consultant Fees	7,000
Architect/Engineering Fees	28,000
Other Fees	65,000
Movable Equipment	195,407
Financing Costs	13,315
Interim Interest Expense	10,652
CON Application Fee	2,000
CON Processing Fee	<u>4,136</u>
Total Project Cost	\$758,110

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$75,811
Bank Loan (6% interest, 10-year term)	<u>682,299</u>
Total	\$758,110

BFA Attachment A presents the members' net worth, which shows sufficient resources to meet the equity requirement. Hudsonshine Capital has provided a letter of interest.

Operating Budget

The applicant has submitted first and third-year operating budgets in 2023 dollars, as 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:				
Medicaid-FFS	\$199.43	\$39,886	\$199.43	\$56,439
Medicaid-MC	\$159.54	875,737	\$159.54	1,241,731
Medicare-FFS	\$165.00	280,005	\$165.00	396,990
Medicare-MC	\$132.00	52,800	\$132.00	74,580
Commercial-FFS	\$170.00	220,490	\$170.00	312,800
Commercial-MC	\$136.00	54,128	\$136.00	76,976
Private Pay	\$190.00	<u>56,810</u>	\$190.00	<u>80,750</u>
Total		\$1,579,856		\$2,240,266
Expenses:				
Operating	\$107.65	\$1,074,312	\$120.77	\$1,709,067
Capital	<u>\$24.29</u>	<u>242,438</u>	<u>\$16.14</u>	<u>228,424</u>
Total	\$131.94	\$1,316,750	\$136.91	\$1,937,491
 Net Income		 \$263,106		 \$302,775
 Total Visits		 9,980		 14,151
Cost per Visits		\$131.94		\$136.91

Utilization broken down by payor source during Year One and Year Three is as follows:

<u>Payor:</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	200	2.00%	283	2.00%
Medicaid-MC	5,489	55.00%	7,783	55.00%
Medicare-FFS	1,697	17.00%	2,406	17.00%
Medicare-MC	400	4.01%	565	4.00%
Commercial-FFS	1,297	13.00%	1,840	13.00%
Commercial-MC	398	3.99%	566	4.00%
Private Pay	299	3.00%	425	3.00%
Charity Care	<u>200</u>	<u>2.00%</u>	<u>283</u>	<u>2.00%</u>
Total	9,980	100%	14,151	100%

The following is noted concerning the submitted budget:

- Medicaid Fee for Service (FFS) rate is based upon the basic per-visit rate plus the cost of capital as obtained from the Bureau of D&TC Reimbursement. Managed Care is assumed to be 80% of the Medicaid FFS's basic rate.
- Medicare Fee for Service rate is based on the Medicare Part B fee schedule. Managed Care is assumed to be 80% of the Medicare FFS rate. The Commercial Fee for Service rate is based on a fee schedule, while the Commercial Managed Care rate is projected at approximately 80% of that.
- Staffing and expenses are based on the experience from the existing private practice, review of existing AHCF-1a, plus an adjustment for added services.
- Utilization projections are based on the experience from the existing private practice.

Amendment to Lease

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

Date:	April 18, 2023
Premises:	4,398 square feet located at 63-18 Austin Street, Rego Park, NY 11374
Landlord:	ADJ Austin, LLC
Lessee:	NYC Medical and Neurodiagnostic P.C.
Term:	Five years (ending 3/31/28), one (1) renewal of 5-year term
Rental:	\$144,000 year one (\$32.75 sq. ft) 3% annual increase, 4% yearly increase during the renewal period.
Provisions:	Utilities, Maintenance, Insurance, and Taxes

The applicant has submitted an affidavit attesting that the lease is an arm's length agreement. The applicant has submitted letters from two New York State real estate brokers attesting to the rental rate being fair market value.

Capability and Feasibility

Total project costs of \$758,110 will be met through member equity of \$75,811, with the remaining \$682,299 balance being financed over ten years through Hudsonshine Capital at 6% interest for a 10-year term.

Working capital requirements are estimated at \$322,916, based on two months of third-year expenses. The working capital will be funded with \$161,458 from member equity, with the remaining \$161,458 satisfied through a three-year loan from Hudsonshine Capital at the firm's five-year cost of funds with an indicative interest rate of 6%. Hudsonshine Capital has provided a letter of interest. A review of BFA Attachments A reveals that Dmitriy Kolesnik, M.D. has sufficient resources to meet all the equity requirements. BFA Attachment B presents Modern Associates, LLC., pro forma balance sheet that shows

operations will start with \$237,269 in equity. The Center projects an operating surplus of \$263,106 and \$302,775 in the first and third years. The applicant's budgets appear to be reasonable.

Conclusion

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

Attachments

BFA Attachment A	Net Worth Statements of Proposed Members of A Modern Associates, LLC
BFA Attachment B	Pro Forma Balance Sheet of Modern Associates, LLC



Project # 231095-B
Fairview Care Center, LLC d/b/a Marton Care Health Center

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment and Construction **Acknowledged:** March 7, 2023

Executive Summary

Description

Fairview Care Center, LLC d/b/a Marton Care Health Center, a New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to provide Primary Medical Care and Other Medical Specialties, including Gynecology, Podiatry, Gastroenterology, Pulmonology, Pain Management, Orthopedics, Oncology, Cardiology, Endocrinology, Urology, Physical Therapy, and Behavioral Health.

The applicant will lease approximately 5,000 square feet on the first floor of a five-story building at 8 and 12 Fairview Place, Brooklyn (Kings County). The site will include four exam rooms and the requisite support areas. The primary service area will be the Flatbush neighborhood.

Ownership of Modern Associates, LLC:

Fairview Care Center, LLC	
<u>Member:</u>	<u>%</u>
Gershon Marton	33.34%
Eliya Karpf	33.33%
Solomon Karpf	33.33%

Abdalla Adam, M.D., is board certified in Physical Medicine and Rehabilitation and will serve as the Center's Medical Director. The applicant will enter into a Transfer and Affiliation Agreement for backup and emergency services

with Kings County Hospital 1 mile (3 minutes) from the Center.

OPCHSM Recommendation
 Approval or Contingent Approval

Need Summary

The applicant projects 9,000 visits in Year One and 19,000 visits in Year Three, with Medicaid utilization at 57.0% and Charity Care at 2.00% for both years.

Program Summary

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

Financial Summary

Total project costs of \$2,123,939 will be met through member equity of \$212,394, with the remaining \$1,911,545 balance being financed through a 10-year self-liquidating loan at the lender's five-year cost of funds with an indicative rate of 6%. A letter of interest has been provided by Hudsonshine Capital.

Budget:	<u>Year One</u>	<u>Year Three</u>
	<u>2024</u>	<u>2026</u>
Revenues	\$1,537,655	\$3,246,161
Expenses:	<u>1,531,931</u>	<u>\$2,173,152</u>
Gain/(Loss)	\$5,724	\$1,073,009

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed project loan commitment acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
7. Submission of an executed building lease acceptable to the Department of Health. [BFA]
8. Submission of a signed/executed copy of a lease agreement that is acceptable to The Department. [CSL]

Approval conditional upon:

1. This project must be completed by **December 1, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **March 1, 2024**, and construction must be completed by **September 1, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date, this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. 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

June 29, 2023

Need Analysis

Background and Analysis

The primary service area is the Flatbush neighborhood in Kings County. The US Census population estimate for Kings County in 2022 is 2,590,516. Cornell's Program on Applied Demographics projects the population will be 2,844,643 by 2028, an increase of 9.8%. According to the NYC Community Health Profiles for the East Flatbush area, 88% were Black and 7% Latino. In the area of Flatbush, the population is as follows 35% Black, 15% Hispanic, 11% Asian, and 37% White.

The facility's location is in a Health Professional Shortage Area for Primary Care, Mental Health, and a Medically Underserved Area.

The following services will be provided: primary care, podiatry, physical therapy, and other medical specialties, inclusive of gynecology, gastroenterology, pulmonology, pain management, orthopedics, oncology, endocrinology, urology, and behavioral health. Hours of operation will be Sunday-Friday, 8:30 am through 5:30 pm. The number of projected visits is 9,000 in Year One and 19,000 in Year Three. Fairview Care Center is seeking to enter a transfer affiliation agreement with NYC Health and Hospitals.

According to Data USA, in 2020, 93.3% of the population in Kings County had health coverage as follows.

Employer Plans	41.1%
Medicaid	32.2%
Medicare	8.01%
Non-Group Plans	11.8%
Military or VA	0.327%

Projected Payor Mix for Outpatient Services		
Payor	Year One	Year Three
Commercial	17.00%	17.00%
Medicare	21.00%	21.00%
Medicaid	57.00%	57.00%
Private Pay	3.00%	3.00%
Charity Care	2.00%	2.00%

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	Zip Code 11226	Kings County	New York State
All PQI's	1,152.15	1,014.91	993.88

Conclusion

The proposed center will increase access to primary care, physical therapy, podiatry, and other medical specialty services in a Medically Underserved Area.

Program Analysis

Project Proposal

Fairview Care Center d/b/a Marton Care Health Center seeks approval to establish and construct an Article 28 diagnostic and treatment center to be located at 812 Fairview Place in Brooklyn (Kings County). The proposed Article 28 diagnostic and treatment center will provide Medical Services-Primary Care and Medical Services- Other Medical Specialties, including Behavioral Health, Endocrinology, Gastroenterology, Gynecology, Oncology, Orthopedics, Pain Management, Physical Therapy, Podiatry, Pulmonology, and Urology.

Proposed Operator	Fairview Care Center
To Be Known As	Marton Care Health Center
Site Address	812 Fairview Place Brooklyn, NY 11226 (Kings County)
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties Behavioral Health Endocrinology Gastroenterology Gynecology Oncology Orthopedics Pain Management Physical Therapy Podiatry Pulmonology Urology
Hours of Operation	Sunday through Friday, 8:30 AM to 5:30 PM
Staffing (1st Year / 3rd Year)	13.42 FTEs / 26.12 FTEs
Medical Director(s)	Adam Abdullah, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Expected to be provided by Kings County Hospital 1.0 miles / 3 minutes away

Character and Competence

The members of Fairview Care Center are:

<u>Name</u>	<u>Ownership Interest</u>
Gershon Marton	33.34%
Solomon Karpf	33.33%
Ilya Karpf	33.33%
Total	100.00%

Dr. Adam Abdullah is the Medical Director and President of Empire Medical & Rehabilitation for 15 years. He is a Staff Psychiatrist at CitiMedical for seven (7) years. He was a Locums at Sentara Virginia Beach General Hospital Inpatient Rehab for eight (8) months. He was a Staff psychiatrist at MetroPain Specialist. He was a Staff Psychiatrist at AHAVA Medical Centers for four (4) years. He was a Physician at PM&R Brooklyn Inpatient Rehab and Nursing Home Centers, Diamond Medical Associates for six (6) years. He was a Medical Director at Amsterdam Medical Center for two (2) years. He was a Medical Officer at Mesam Hospital in Nigeria for one (1) year. He was the Director of Relief and Development at Darfur Peace and Development Organization for six (6) years. He was the Medical Director of Jamia Kabir Clinic for four (4) years. He was the Administrative and Deputy Director of Sabeh Children's Hospital for one (1) year. He received his medical degree from Khartoum University in Sudan. He completed his Physical Medical and Rehabilitation residency at SUNY Stony Brook.

Eliya Karpf is an Owner of Select Pacific Realty for 15 years. He owns and manages private real estate. He is a Property Developer for eight (8) years. He syndicated the purchase and development of a commercial and residential mixed-use building. He coordinated all aspects of developing the property, including overseeing workers and satisfactorily completing the project resulting in the receipt of the Certificate of Occupancy. He is the Founder of Edifice Builders, LLC for eight (8) years. He established a construction company and built in New York City. He is the Current Owner of Fairview Property Management for three (3) years. He oversees all areas of property management for residential and commercial buildings.

Solomon Karpf is a Tutor for nine (9) years. He tutors children and teenagers and has many years of experience working with children to understand what they need to learn in order to be successful in school. He was a Property Developer for Fairview Residence, LLC for four (4) years. He developed commercial/residential mixed-use building, coordinating all stages of the project. He successfully completed the projects with a Certificate of Occupancy from the Department of Buildings. He is a Property Manager for Fairview Property Manager Mgt, LLC for four (4) years. He manages residential and commercial buildings and provides a wide range of services for the tenants.

Gershon Marton is the Administrator of GoodCare Home Health Services for one (1) year. He manages all aspects of the agency's daily operations, including scheduling, payroll, accounts payable, and client services. He develops and implements policies and procedures to ensure quality care and compliance with regulatory standards, supervises and provides direction to office staff, monitors and evaluates staff performance, prepares reports and analyzes data to assess the effectiveness of agency operations, and maintains client records and files. He is the CEO of Marton Care for six (6) years. He directs and maintains the responsibility for all operations, initiates and contracts and rates for CDPAP services with multiple payors, creates and implements policies and procedures, plans and coordinates all projects through completion, coordinates finances for projects, and provides a key role in increasing customer retention and satisfaction. He also played a role in the recruitment, development, and termination of employees as well as ensuring compliance with regulations. He was a Direct Care Worker for Concepts of Independence for two (2) years. He provided support to clients to perform ADLS, ran errands, assisted with personal hygiene, and performed housekeeping tasks.

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

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$2,123,939, broken down as follows:

Renovation & Demolition	\$1,371,033
Design Contingency	137,103
Construction Contingency	137,103
Architect/Engineering Fees	106,488
Other Fees	70,000
Movable Equipment	197,518
Financing Costs	54,652
Interim Interest Expense	36,435
CON Application Fee	2,000
CON Processing Fee	<u>11,607</u>
Total Project Cost	\$2,123,939

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$212,394
Bank Loan (6% interest, 10-year term)	<u>1,911,545</u>
Total	\$2,123,939

BFA Attachment A presents the members' net worth, which shows sufficient resources to meet the equity requirement. Hudsonshine Capital has provided a letter of interest for the bank loan.

Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>2024</u>		<u>2026</u>	
Revenues:	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid-FFS	\$206.05	\$37,089	\$206.05	\$78,300
Medicaid-MC	\$175.14	866,966	\$175.14	1,830,261
Medicare-FFS	\$175.00	267,750	\$175.00	565,250
Medicare-MC	\$148.75	53,550	\$148.75	113,050
Commercial-FFS	\$175.00	204,750	\$175.00	432,250
Commercial-MC	\$148.75	53,550	\$148.75	113,050
Private Pay	\$200.00	<u>54,000</u>	\$200.00	<u>114,000</u>
Total		\$1,537,655		\$3,246,161
Expenses:				
Operating	\$119.85	\$1,078,630	\$91.39	\$1,736,410
Capital	<u>\$50.37</u>	<u>453,301</u>	<u>\$22.99</u>	<u>436,742</u>
Total	\$170.22	\$1,531,931	\$114.38	\$2,173,152
Net Income		\$5,724		\$1,073,009
Total Visits		9,000		19,000
Cost per Visits		\$170.22		\$114.38

Utilization broken down by payor source during Year One and Year Three is as follows:

Payor:	Year One		Year Three	
	2024		2026	
	Visits	%	Visits	%
Medicaid-FFS	180	2.00%	380	2.00%
Medicaid-MC	4,950	55.00%	10,450	55.00%
Medicare-FFS	1,530	17.00%	3,230	17.00%
Medicare-MC	360	4.00%	760	4.00%
Commercial-FFS	1,170	13.00%	2,470	13.00%
Commercial-MC	360	4.00%	760	4.00%
Private Pay	270	3.00%	570	3.00%
Charity	<u>180</u>	<u>2.00%</u>	<u>380</u>	<u>2.00%</u>
Total	9,000	100%	19,000	100%

The following is noted with respect to the submitted budget:

- Medicaid Fee for Service (FFS) rate is based upon the basic per-visit rate plus the cost of capital as obtained from the Bureau of D&TC Reimbursement. Managed Care is assumed to be 85% of the Medicaid APG FFS's basic rate.
- Medicare Fee for Service rate is based on the Medicare Part B fee schedule. Managed Care is assumed to be at 85% of the Medicare FFS rate. The Commercial Fee for Service is based on a fee schedule, while the Commercial managed care rate is approximately 85%.
- Staffing and expenses are based on analyzing the area's patient quality indicators (PQI).
- The utilization assumptions by payer source are based on the demographic needs of the proposed service area. Specifically, Medicaid utilization is based on the current statistical analysis of the population and the patients to be served.

Lease Rental Agreement

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

Premises:	5,000 square feet located at 8 and 12 Fairview Place, Brooklyn, NY 11226
Landlord:	Fairview Residence, LLC
Lessee:	Fairview Care Center, LLC
Term:	5 years, three (3) renewals of 5-year term
Rental:	\$168,000 year one (\$33.60 per sq. ft.) 3% annual increases
Provisions:	Utilities, Maintenance, and Insurance

The applicant has submitted an affidavit attesting that the lease is a non-arms-length agreement. The applicant has submitted letters from two New York State real estate brokers attesting to the rental rate being fair market value.

Capability and Feasibility

Total project costs of \$2,123,939 will be met through member equity of \$212,394, with the remaining \$1,911,545 being financed over ten years through Hudsonshine Capital at 6% interest. Working capital requirements are estimated at \$362,192, based on two months of third-year expenses. The working capital requirement will be funded by \$181,096 in member equity, with the remaining \$181,096 satisfied through a three-year loan from Hudsonshine Capital at the firm's five-year cost of funds with an indicative interest rate of 6%. Hudsonshine Capital has provided a letter of interest. A review of BFA Attachments A reveals that the members have sufficient resources to meet all the equity requirements.

BFA Attachment B presents Fairview Care Center, LLC's pro forma balance sheet and shows operations will start with \$393,490 in equity. The Center projects an operating surplus of \$5,724 and \$1,073,009 in the first and third years. The budgets appear to be 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 Proposed Members of Fairview Care Center, LLC d/b/a Marton Care Health Center
BFA Attachment B	Pro Forma Balance Sheet of Fairview Care Center, LLC d/b/a Marton Care Health Center



**Project # 231111-B
C & T Health Clinic**

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment and Construction **Acknowledged:** April 4, 2023

Executive Summary

Description

C&T Medical Center, Inc. (a proposed corporation), d/b/a C&T Health Clinic, requests approval to establish and construct a new diagnostic and treatment center at 74-15 37th Avenue, Jackson Heights, New York. The Center will be in renovated space and provide primary care and other medical specialties services. The applicant plans to provide services in Gynecology, Podiatry, Gastroenterology, Pulmonology, Pain Management, Orthopedics, Oncology, Cardiology, Endocrinology, Urology, Behavioral Health, and Physical Therapy.

The proposed shareholders of C&T Medical Center, Inc. are James Hossain, MD (70%) and Shamin Ahmed, MD (30%)

The proposed medical director will be Shamin Ahmed, MD. The applicant will enter into a transfer agreement with New York Health and Hospitals Corporation/Elmhurst Hospital.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 6,864 visits in Year One and 13,042 in Year Three, with Medicaid at 57.00% and Charity Care at 2%.

Program Summary

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

Financial Summary

The total project cost of \$1,730,938 will be met with shareholders' equity of \$173,094 and a bank loan of \$1,557,844 at an interest rate of 6% for a ten-year term.

Budget	<u>Year One</u> <u>(2025)</u>	<u>Year Three</u> <u>(2027)</u>
Revenues	\$1,078,412	\$2,048,973
Expenses	<u>1,045,960</u>	<u>1,532,574</u>
Net Income	\$32,452	\$516,399

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. This project must be completed by **February 1, 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 **July 1, 2024**, and construction must be completed by **November 1, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
5. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AES]
6. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AES]
7. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2012 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients, and other building occupants, essential resident/patient support services, and the required means of egress from the actual construction site. The applicant

shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AES]

Council Action Date
June 29, 2023

Need Analysis

Background and Analysis

The primary service area is Jackson Heights in Queens County. The population estimate of Queens County in 2022 was 2,278,029 according to the most recent US Census data. The population of the county is estimated to increase to 2,544,231 by 2028 per projection data from the Cornell Program on Applied Demographics, an increase of 11.7%. According to the applicant, based on data from the NYS Furman Center, in 2019 the population of Jackson Heights (Queens County) was 64.9% Hispanic, 18.9% Asian, 10.7% white, and 4.0% Black. Jackson Heights is noted to have the largest Bangladeshi community in the city as well as Nepalese immigrants.

The following services are being requested: Primary Care, Podiatry, Physical Therapy, and Other Medical Services including, Gynecology, Gastroenterology, Pulmonology, Pain Management, Orthopedics, Oncology, Cardiology, Endocrinology, Urology, and Behavioral Health. Hours of operation will be Monday-Friday, 8:00 AM-5:00 PM; Saturday, 9:00 AM-1:00 PM. The number of projected visits is 6,864 in Year One and 13,042 in Year Three.

This facility is located in a Health Professional Shortage Area for Primary Care and Mental Health.

The establishment of this Article 28 is part of an overall plan to provide comprehensive primary care to residents within the areas of Jackson Heights (including East Elmhurst, Jackson Heights, and North Corona) and Flushing. The applicant seeks to reduce preventable admissions for patients in the community, as well as improve overall health. Many of the residents in the community to be served have comorbidities due to conditions associated with an elevated elderly population such as joint disorders, connective tissue disease, fall-related injuries, back pain, and eye conditions. These conditions lead to a high rate of follow-up visits and re-hospitalization.

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

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

Projected Payor Mix for Outpatient Services		
Payor	Year One	Year Three
Commercial	17.00%	17.00%
Medicare	21.01%	21.00%
Medicaid	56.99%	57.00%
Private Pay	3.00%	3.00%
Charity Care	2.00%	2.00%

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	Queens County	New York State
All PQI's	866	994

Conclusion

The applicant plans to provide comprehensive primary care while helping to reduce preventable hospital admissions.

Program Analysis

Project Proposal

C&T Medical Center, Inc. seeks approval to establish and construct an Article 28 diagnostic and treatment center to be located at 74-15 37th Avenue in Jackson Heights (Queens County). The proposed center will provide Medical Services-Primary Care and Medical Services- Other Medical Specialties including Gynecology, Podiatry, Gastroenterology, Pulmonology, Pain Management, Orthopedics, Oncology, Cardiology, Endocrinology, Urology, Behavioral Health, and Physical Therapy.

Proposed Operator	C&T Medical Center, Inc.
To Be Known As	C&T Health Clinic
Site Address	74-15 37 th Avenue Jackson Heights, New York 11372(Queens County)
Specialties	Medical Services-Primary Care Medical Services-Other Medical Specialties Gynecology Podiatry Gastroenterology Pulmonology Pain Management Orthopedics Oncology Cardiology Endocrinology Urology Behavioral Health Physical Therapy
Hours of Operation	Monday-Friday 8:00 am to 5:00 pm Saturday 9:00 am to 1:00 pm
Staffing (1 st Year / 3 rd Year)	10.27 FTEs / 18.46 FTEs
Medical Director(s)	Shamim Ahmed M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Elmhurst Hospital 1 mile / 3 minutes

Character and Competence

The members of C&T Medical Center, Inc. are:

<u>Name</u>	<u>Ownership Interest</u>
<i>James Hossain</i>	70.00%
<i>Shamim Ahmed</i>	30.00%
<i>Total</i>	100.00%

Dr. Shamim Ahmed is an Owner and the proposed Medical Director. He is a Community Practicing Physician and Owner of GetWell Med-Care P.C. for 19 years. He was the Medical Director of the Primary Care Center at Interfaith Medical Center for over seven (7) years. He was an Attending Physician at the Primary Care Center at Interfaith Medical Center for over nine (9) years. He received his medical degree from the Mymensingh Medical College in Bangladesh. He completed his Internal Medicine Residency at Lincoln Medical and Medical Health Center and Weill Medical College of Cornell University. He completed his Geriatric Medicine Fellowship at New York Medical College University. He is Board Certified in Internal Medicine and Geriatric Medicine. Dr. Ahmed discloses ownership interest in the following healthcare facilities:

GetWell Med-Care P.C.

01/2007-present

Jahid “James” Hossain is the President of C&T Homecare Services, LLC for over six (6) years. He leads, guides, directs, and evaluates all other officers, managers, and employees to ensure they are carrying out the daily operations of the company. He is the President of Maxim Litigation Support Services for 20 years. He leads, guides, directs, and evaluates all other officers, managers, and employees to ensure they are carrying out the daily operations of the company. He was the Director of Operations of M&S Home Care Services for over four (4) years. He directed actions across the organization and directed managers to improve efficiency and reduce costs. Mr. Hossain discloses ownership interest in the following healthcare facilities:

Agincare Homecare Services d/b/a CNT Homecare 08/2017-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.

- *Mr. Hossain disclosed that on May 15, 2020, Paradigm Health Group submitted an arbitration request seeking damages relating to a claim that C&T Home Care Services breached an agreement to execute Paradigm’s self-funded health benefits living wage advocacy program for full-time employees. The American Arbitration Committee dismissed the matter with prejudice on December 29, 2020.*
- *Mr. Hossain also disclosed that an action was commenced on February 21, 2020, against himself and C&T Homecare Services, LLC alleging violations against the Fair Labor Standards Act and New York Labor Law for failing to pay overtime. A settlement was reached through arbitration and the matter was closed in February 2022.*

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

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$1,730,938, broken down as follows:

Renovation and Demolition	\$1,065,636
Design Contingency	106,564
Construction Contingency	106,564
Architect/Engineering Fees	82,368
Other Fees (Consultant)	75,000
Moveable Equipment	225,904
Financing Costs	35,903
Interim Interest Expense	21,542
CON Fees	2,000
Additional Processing Fee	<u>9,457</u>
Total Project Cost	\$1,730,938

The applicant's financing plan appears as follows:

Equity	\$173,094
Bank Loan (6% interest rate for a ten-year term)	\$1,557,844

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>Year Three</u> <u>(2027)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:				
Commercial FFS	\$170.00	\$151,640	\$170.00	\$288,150
Commercial MC	\$136.00	\$37,400	\$136.00	\$70,992
Medicare FFS	\$165.00	\$192,555	\$165.00	\$365,805
Medicare MC	\$132.00	\$36,300	\$132.00	\$68,904
Medicaid FFS	\$196.82	\$26,965	\$196.82	\$51,371
Medicaid MC	\$157.46	\$594,412	\$157.46	\$1,129,461
Private Pay	\$190.00	<u>\$39,140</u>	\$190.00	<u>\$74,290</u>
Net Revenues		\$1,078,412		\$2,048,973
Expenses:				
Operating	\$110.48	\$758,320	\$96.82	\$1,262,777
Capital	<u>\$41.91</u>	<u>\$287,640</u>	<u>\$20.69</u>	<u>\$269,797</u>
Total Expenses	\$152.38	\$1,045,960	\$117.51	\$1,532,574
Net Income		\$32,452		\$516,399
Utilization: (Visits)		6,864		13,042

The following is noted with respect to the submitted budget:

- Expense assumptions are based on the costs associated with providing services.
- Revenues are based on current reimbursement methodologies for primary care and other medical specialty services.
- Utilization assumptions are based on the demographic needs of the proposed service area and the Medicaid utilization is based on the current statistical analysis of the population and the patients to be served.

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

	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	13.00%	13.00%
Commercial MC	4.01%	4.00%
Medicare FFS	17.00%	17.00%
Medicare MC	4.01%	4.00%
Medicaid FFS	2.00%	2.00%
Medicaid MC	55.00%	55.00%
Private Pay	3.00%	3.00%
Charity Care	<u>2.00%</u>	<u>2.00%</u>
Total	100.00%	100.00%

Sublease Agreement

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

Premises	3,432 square feet located at 74-11 37 th Avenue, Jackson Heights, New York.
Sublessor	C&T Home Care Services, LLC
Sublessee	C&T Medical Center, Inc.
Term	10 years
Rental	Year One: \$336,774 (\$98.13 per sq.ft.) with a 3% increase each year from Year 2 through 5. Year 6: \$435,381 (\$126.86 per sq.ft.) and a 3% increase per year from Year 6 through Year 10.
Provisions	The sublessee shall be responsible for maintenance, utilities, and real estate taxes.

The applicant has indicated that the master landlord is Bruson Building, LLC and there is a relationship between the master landlord and the applicant. The applicant provided two real estate letters in support of rental payments.

Capability and Feasibility

Project costs of \$1,730,938 will be met with \$173,094 in equity from the proposed shareholders' resources. The remainder, \$1,557,844, will be financed with a bank loan at an interest rate of 6% for a ten-year term. The applicant submitted a bank letter of interest regarding the financing.

Working capital requirements are estimated at \$255,429, equivalent to two months of third-year expenses. The applicant will finance \$127,714 with a bank loan at an interest rate of 6% for a three-year term. The remainder, \$127,715, will be covered with equity from the proposed shareholders' personal resources. Presented as BFA Attachment A are the personal net worth statements of the proposed members of C&T Medical Center, Inc., indicating the availability of sufficient funds for equity contributions. Presented as BFA Attachment B is the pro forma balance sheet of C&T Medical Center, Inc. as of the first day of operation, indicating a positive net asset position of \$300,809.

The submitted budget indicates a net income of \$32,452 and \$516,399 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for primary care and other medical specialty services. The submitted budget appears reasonable.

Conclusion

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

Attachments

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



Project # 231126-E
Forme Rehabilitation Inc

Program: Diagnostic and Treatment Center **County:** Westchester
Purpose: Establishment **Acknowledged:** April 4, 2023

Executive Summary

Description

Forme Medical Center, Inc. (FMC), an existing Article 28 Diagnostic and Treatment Center seeks approval to transfer 100% ownership interest from one (1) withdrawing member to two (2) new members. FMC is located at 7-11 Broadway in White Plains (Westchester County). There will be no change in services as a result of this application.

On November 4, 2022, Gina Cappelli, FMC's current sole shareholder and owner, entered into a Stock Purchase Agreement to sell all outstanding shares in FMC to the two proposed members.

Ownership before and after the requested change is as follows:

<u>Current Operator</u>	
Forme Rehabilitation, Inc	
<u>Member:</u>	
Gina Cappelli	100%
<u>Proposed Operator</u>	
Forme Rehabilitation, Inc	
<u>Members:</u>	
Joel Stern	50%
Yitzchok Ekstein	50%
Total	100%

Gary Todd Midelton, M.D., board certified in Internal Medicine, will continue to serve as the medical director at the center. FMC currently has a transfer agreement with White Plains Hospital

Center 0.8 miles (4 minutes travel time) from the FMC for backup medical, diagnostics, emergency and other medical services.

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).

Financial Summary
There are no project costs associated with this application. The total purchase price for the D&TC's operations is \$10,000,000. The purchase price will be satisfied via \$8,000,000 acquisition loan and \$2,000,000 in additional financing (pari passu) at 8.5% interest with a ten-year term, \$1,000 application fee and a 1.5% broker fee. Broadscope Funding has provided a letter of interest for the financing at the stated terms.

<u>Budget:</u>	<u>Year One</u>	<u>Year Three</u>
	<u>2023</u>	<u>2025</u>
Revenues	\$12,166,447	\$12,381,789
Expenses:	<u>8,758,748</u>	<u>8,957,615</u>
Gain:	\$3,407,699	\$3,424,174

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 bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of executed stock share certificates that are acceptable to The Department. [CSL]

Approval conditional upon:

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

June 29, 2023

Program Analysis

Project Proposal

Forme Medical Center, Inc. (FMC), an existing Article 28 Diagnostic and Treatment Center seeks approval to transfer 100% ownership interest from one (1) withdrawing member to two (2) new members. FMC is located at 7-11 Broadway in White Plains (Westchester County). There will be no change in services, but staffing will increase 4.3 FTEs in Year One and 0.7 FTEs in Year Three as a result of this application.

Character and Competence

The proposed membership Forme Rehabilitative, Inc. is provided in the chart below.

<u>Member Name/Title</u>	<u>Current Ownership</u>	<u>Proposed Ownership</u>
Gina Cappeli	100.00%	-----
Joel Stern***	-----	50.00%
Yitzchok Ekstein***	-----	50.00%
Total	100%	100%

***Members Subject to Character and Competence

Yitzchok Ekstein is the COO of Rapid Care Urgent Care for one (1) year. He is responsible for strategic and operational leadership including setting operational goals and objectives, developing, and implementing operational policies and procedures, and ensuring efficient and effective operations across all departments. He is responsible for financial management including budgeting, financial forecasting, financial analysis, and sustainability. He is responsible for quality management and human resources management including quality patient care and customer services. Also, he is responsible for recruitment, onboarding, training, employee relations, and ensuring compliance with laws and regulations. He is also responsible for stakeholder management, emergency preparedness, and compliance with regulatory oversight. He is a Legislative Aide for the Village of South Blooming Grove for over two (2) years. He advises and develops policies and procedures and implemented policies to make the village RLIUPA compliant. He was the COO of Committed Home Care for four (4) years. He built the agency up to 3,000 patients, implemented policies and procedures to prevent fraud and abuse, and successfully got the CDPAP RFO award. He was the COO of Cedarwood Homer Community for over four (4) years. He implemented policies and procedures to prevent fraud and abuse and received a CDPAPA RFO award.

Joel Stern is the Operations Manager of Rapid Care Urgent Care for one (1) year. He is responsible for the day-to-day operations and caretaking of the facility. He is the Assistant to the Mayor of the Village of South Blooming Grove for over two (2) years. He represents the Mayor in front of the Village, Planning and Zoning Boards, and other municipalities and intergovernmental agencies. He handles all communications of the Mayor on all village matters. He is a Board Representative of the United Jewish Community. He represents the Board on behalf of the community in front of government agencies and takes care of public relations. He was the COO of Windsor Global for five (5) years. He developed and implemented operational strategies, managed operational teams, monitored performance, ensured compliance, managed budgets and collaborated with other executives. He developed and maintained relationships and identified growth opportunities. He oversaw various departments and teams, monitored performances, managed budgets, and collaborated to achieve company goals and objectives.

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

Operating Budget

The applicant has submitted their current certified fiscal year (2021) and first and third-year outpatient operating budget in 2023 dollars, summarized below:

	<u>Current Year</u> <u>(2021)</u>		<u>Year One</u> <u>(2023)</u>		<u>Year Three</u> <u>(2025)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues:						
Commercial FFS	\$127.95	\$5,081,474	\$147.84	\$5,347,936	\$147.90	\$5,454,842
Medicare FFS	\$45.05	139,521	\$52.05	146,834	\$52.08	149,772
Medicare MC	\$105.31	58,656	\$121.76	61,731	\$121.79	62,965
Medicaid FFS	\$104.13	39,154	\$120.49	41,206	\$120.43	42,030
Medicaid MC	\$146.04	3,098,220	\$168.73	3,260,636	\$168.82	3,325,849
Private Pay	\$245.97	1,495,013	\$284.16	1,573,386	\$284.30	1,604,853
All Other*	\$119.07	1,979,522	\$183.83	2,783,826	\$182.07	2,810,917
Less: Bad Debt		<u>(1,047,455)</u>		<u>(1,102,441)</u>		<u>(1,124,439)</u>
Total Revenue		\$10,844,105		\$12,113,114		\$12,326,789
Other Op. Rev.		309,309		53,333		55,000
Total Op. Rev.		\$11,153,414		\$12,166,447		\$12,381,789
Non-Op. Rev.		298,453		0		0
Total Proj. Rev.		\$11,451,867		\$12,166,447		\$12,381,789
Expenses:						
Operating	\$54.90	4,812,799	\$103.16	\$8,237,039	\$103.20	\$8,401,780
Capital	<u>5.36</u>	<u>469,780</u>	<u>6.53</u>	<u>521,709</u>	<u>6.83</u>	<u>555,835</u>
Total Expenses	\$60.26	5,282,579	\$109.69	\$8,758,748	\$110.03	\$8,957,615
Net Income/(Loss)		<u>6,169,288</u>		<u>\$3,407,699</u>		<u>\$3,424,174</u>

Visits 87,661 79,850 81,408

* All Other includes NYSCHIP, workers comp and no-fault, and CARES Act revenue.

The following is noted with respect to the submitted budget:

- Revenue, expense and utilization projections are based on the historical, financial, and statistical information of the existing operator. The variance between the Current Year budget expenses and the expenses presented in FMC's 2021 certified financial statements is attributed to how the bad debt, interest, and income tax expenses are presented in the 2021 financial statements compared to the Current Year budget presentation.
- Decreases in Commercial, Medicare, and Medicaid Fee for Service (FFS) revenues between Current Year and Years 1 and Year 3 is attributable to reductions in patient volume and revenues as a result of the COVID-19 pandemic.
- The number and mix of staff projected for the Year 1 and Year 3 is based on the applicant's experience and need.
- Expense projections are based on the current operator's expenses adjusted for inflation.

Utilization by payor source is as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	45.30%	45.30%	45.30%
Medicare FFS	3.53%	3.53%	3.53%
Medicare MC	0.64%	0.64%	0.64%
Medicaid FFS	0.43%	0.43%	0.43%
Medicaid MC	24.20%	24.20%	24.20%
Private Pay	6.93%	6.93%	6.93%
All Other	<u>18.96%</u>	<u>18.96%</u>	<u>18.97%</u>
Total	100.00%	100.00%	100.00%

Stock Purchase Agreement

The applicant has submitted an executed Stock Purchase Agreement (SPA), effectuated on November 4, 2022, and summarized as follows:

Date:	November 4, 2022
Purchasers:	Joel Stern Yitzchok Ekstein
Seller:	Gina Cappelli
Corporation:	Forme Medical Center, Inc. d.b.a. Forme Medical Center, and Urgent Care an Article 28 Diagnostic and Treatment Center located at 7-11 South Broadway
Escrow Agent:	Bleakly Platt & Schmidt, LLP
Transaction:	All of the outstanding shares of capital stock of the corporation consisting of common stock with \$0.00 par value.
Purchase Price:	10,000,000
Payment:	The cash purchase price amounts to \$10,000,000 less: Deposit: \$500,000 paid by the purchasers to the escrow agent on the effective date. Debts: \$119,000 attributed to Connect One Bank loan \$1,000,000 attributed to Louis Cappelli loan Any working capital above zero (\$0) at closing.
NYSDOH Grant:	Prior to the effective date, the seller submitted an application for NYSDOH Statewide Health Care Facility Transformation Program for a grant of \$2,000,000 to be used by the Corporation to open a new D&TC location in Yonkers, New York. In the event the corporation is awarded the grant and approved by NYSDOH with purchases as owners of the corporation the purchase price shall be increased by \$500,000 due within 10 days.
Closing:	15 days after receipt of NYSDOH approval.

Second Amendment to Lease Agreement

The applicant has provided an executed second amendment to lease agreement, the terms of which are summarized as follows:

Date:	February 14, 2014
Premises:	Located at 7-11 South Broadway, White Plains, New York 10601 and include Suite 101 (the original premises) and Suite 102 (new space).
Owner:	GHP Broadway, LLC
Tenant:	Forme Rehabilitation, Inc.
Terms:	12 years, terminating on March 31, 2026, with an option to renew for one term of 8 years.
Base Rent:	Original premises: April 1, 2014, to March 31, 2017 - \$168,325 (\$14,027.08 per month) April 1, 2017 to March 31, 2020 - \$188,524 (\$15,710.33 per month) April 1, 2020 to March 31, 2022 - \$195,257 (\$16,271.42 per month) April 1, 2022 to March 31, 2024 - \$215,456 (\$17,954.67 per month) April 1, 2024 to March 31, 2026 - \$235,655 (\$19,637.67 per month) New Space: Nov. 1, 2014 to March 31, 2018 - \$76,625 (\$6,385.42 per month) April 1, 2018 to March 31, 2021 - \$85,820 (\$7,151.67 per month) April 1, 2021 to March 31, 2023 - \$88,885 (\$7,407.08 per month) April 1, 2023 to March 31, 2025 - \$98,080 (\$8,173.33 per month) April 1, 2025 to March 31, 2026 - \$107,275 (\$8,939.58 per month)
Security Deposit:	Increased from \$19,637.92 to \$28,577.50 to include New Space.
Provisions:	Taxes, utilities, insurance, and repairs and maintenance

The applicant has submitted an affidavit stating that the lease arrangement is an arm's length agreement. Letters from two New York State realtors have been provided attesting to the rent being of fair market value.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the operation is \$10,000,000. The purchase price will be satisfied by an \$8,000,000 loan and \$2,000,000 in additional financing (pari passu) at 8.5% interest with a ten-year term, \$1,000 application fee, and a 1.5% broker fee. Broadscope Funding has provided a letter of interest for the financing at the stated terms.

The working capital requirement is \$1,459,791 based on two months of the first year's expenses. It will be funded with members' equity of \$1,209,791 and a bank loan for \$250,000 for a five-year term at 8.5% interest. Broadscope Funding has provided a letter of interest. BFA Attachment F, pro-forma balance sheet of FMC, shows the operation will start with \$1,460,000 in member equity after the membership transfer.

BFA Attachment C summarizes the 2021 Certified Financial Statements for Forme Medical Center, and shows positive working capital, a positive net asset position, and a positive operating income of \$4,860,172. BFA Attachment D presents a summary of the Internal Financial Statements for the year ended December 31, 2022 and shows negative working capital, a negative net asset position, and operating income of \$569,841. BFA Attachment E presents the internal financial statements of FMC for the period ended March 31, 2023, during which FMC reported positive working capital, a negative net asset position, and a net income of \$166,555.

Conclusion

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

Attachments

BFA Attachment A	Proposed Members' Net Worth Statements
BFA Attachment B	Proposed Members' Equity Analysis
BFA Attachment C	2021 Forme Medical Center, Inc. Audited Financial Statements
BFA Attachment D	December 2022 Forme Medical Center, Inc. Internal Financial Statements
BFA Attachment E	March 2023 Forme Medical Center, Inc. Internal Financial Statements
BFA Attachment F	Pro-Forma Balance Sheet

MEMORANDUM

To: Kathy Marks
General Counsel
Division of Legal Affairs

From: Jason Riegert, Deputy Director
Bureau of Program Counsel

Date: May 5, 2023

Subject: Proposed Dissolution of The Grace View Manor Nursing Home Corporation

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: Michael Stelluti
Division of Health Facility Planning and Development

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

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

Date: May 5, 2023

Subject: Proposed Dissolution of The Grace View Manor Nursing Home Corporation

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 September 8, 2022, electronic letter to the PHHPC requesting dissolution from Paul Hopeck of Assistant Vice President Delaney Corporate Services, Ltd., Consultant to The Grace View Nursing Home Corporation;
- 3) A draft Verified Petition, to be signed by Robert S. Montgomery, Jr., Secretary of The Grace View Manor Nursing Home Corporation after the Department of Health and PHHPC approval seeking the State Attorney General's approval for the filing of the Applicant's Certificate of Dissolution;
- 4) A Plan of Dissolution of The Grace View Manor Nursing Home Corporation;
- 5) The Restated Certificate of Incorporation of The Grace View Manor Nursing Home Corporation as well subsequent approvals of Certificate of Amendments of the Certificate of Incorporation;
- 6) The Amended and Restated Bylaws of The Grace View Manor Nursing Home Corporation;
- 7) The February 26, 2022, Resolutions of the Members of The Grace View Manor Nursing Home Corporation, to approve the dissolution; and
- 8) The February 26, 2022, Written Consent of the Directors to approve the dissolution of The Grace View Manor Nursing Home Corporation.

Attachments.

cc: J. Corvino

[Type here]

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *KSM*

Date: May 5, 2023

Subject: Proposed Dissolution of The Grace View Manor Nursing Home Corporation

The Grace View Manor Nursing Home Corporation ('The Corporation') requests Public Health and Health Planning Council ('PHHPC') approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law ('NPCL') § 1002(c) and § 1003 as well as 10 NYCRR Part 650.

The Corporation is a New York not-for-profit corporation incorporated on May 6, 1991, with the purpose of being the licensed operator of a Residential Health Care Facility located at 10 Acre Place, Binghamton, NY 13904. On December 31, 2010, the Corporation sold substantially all of its assets to Norwich Operating Co., LLC, at which time skilled nursing operations conducted under The Corporation ceased. Because The Corporation has concluded operations and gone dormant, its Board of Directors believe it is in the best interests of the Corporation to dissolve.

Both the Members and the Board of Directors of The Corporation approved and authorized dissolution and authorized the filing of the Certificate of Dissolution on February 26, 2022.

The Corporation has no assets or liabilities.

Attached is an electronic letter request from Paul E. Hopeck on behalf of The Corporation, a proposed Verified Petition to the Attorney General, a Plan of Dissolution, a proposed Certificate of Dissolution, The Corporation's Restated Certificate of Incorporation with current amendment, Bylaws and Resolutions of the Members as well as the Board of Directors authorizing the dissolution.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and the Certificate of Dissolution, and it is in legally acceptable form.

Attachments

DiCocco, Vincent (HEALTH)

Subject: FW: The Grace View Manor Nursing Home Corporation - PHHPC Consent to Dissolution
Attachments: THE GRACE VIEW NURSING HOME CORPORATION - Plan of Dissolution.pdf; THE GRACE VIEW NURSING HOME CORPORATION - Certificate of Dissolution.pdf; THE GRACE VIEW NURSING HOME CORPORATION - Certificate of Incorporation and Amendments.pdf; THE GRACE VIEW NURSING HOME CORPORATION - Bylaws.pdf; THE GRACE VIEW NURSING HOME CORPORATION - Resolution of the Board.pdf; THE GRACE VIEW NURSING HOME CORPORATION - Resolution of the Members.pdf

From: Paul <Paul@delaneycorporate.com>
Sent: Thursday, September 8, 2022 2:37:00 PM
To: Leonard, Colleen M (HEALTH) <colleen.leonard@health.ny.gov>
Subject: The Grace View Manor Nursing Home Corporation - PHHPC Consent to Dissolution

You don't often get email from paul@delaneycorporate.com. [Learn why this is important](#)

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

Good Afternoon Colleen,

My client is dissolving their Corporation THE GRACE VIEW MANOR NURSING HOME CORPORATION which requires consent from your office. Attached hereto are the items listed below which I believe are all the items required in order to start the review process. My client advised that there is a PHHPC Committee Meeting on September 15, 2022 and a Full Council Meeting on October 6, 2022. Would it be possible to have the proposed dissolution reviewed at this meeting or is it cutting it to close? Any feed back would be much appreciated.

1. Plan of Dissolution
2. Certificate of Dissolution
3. Certificate of Incorporation and Amendments
4. Bylaws
5. Resolution of the Board
6. Resolution of the Members

**VERIFIED PETITION TO THE ATTORNEY GENERAL
FOR APPROVAL OF CERTIFICATE OF DISSOLUTION**

ATTORNEY GENERAL
State Office Building, 17th Floor
44 Hawley Street
Binghamton, New York 13901

AG#

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK

Petitioner, The Grace View Manor Nursing Home Corporation, by Robert S. Montgomery, Jr., Secretary of the Corporation, for its Verified Petition alleges:

1. The Grace View Manor Nursing Home Corporation, whose principal office is located in the County of Broome, was incorporated pursuant to New York's Not-for-Profit Corporation Law on May 6, 1991. A copy of the Certificate of Incorporation and any amendments are attached as an Exhibit A.
2. The names and addresses of each of the directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Rev. Nancy Adams	7 Beethoven Street, Binghamton, NY 13905
Emil Augustine	228 Pollock Drive, Pittston, PA 18640
Sharon (Calli) Berg	106 Pollock Drive, Pittston, PA 18640
Edwin G. Betz	2 Sequoia Lane, Apalachin, NY 13732
John G. Carling (Hon.)	201 Beechwood Drive, Roaring Brook Twp., PA 18444
Rev. Douglas A. Clark	7 Utica Avenue, Binghamton, NY 13901
Rev. Carol Coleman (Hon.)	56 Conyngham Street, Ashley, PA 18706
Kathleen Byrne Colling	421 Castleman Road, Vestal, NY 13850

Joseph B. Coons	7 Columbia Avenue, Binghamton, NY 13903
John Crouse (Hon.)	714 Griffin Pond Road, S. Abington Twp., PA 18411
Melissa Drabo	21 Terrace Drive, Binghamton, NY 13905
Robert W. Hall	309 Pine Lane, Mountain Top, PA 18707
Alan Hertel	4 Greybark Drive, Apalachin, NY 13732
Maryann K. Johnson	2088 E. Hamton Road, Binghamton, NY 13903
Allan Kinsman	140 Grandview Drive, Tunkhammock, PA 18657
Lisa Lee (Hon.)	816 Buffalo Street, Endicott, NY 13760
Sharron Lewis	133 Kingswood Drive, Dallas, PA 18612-1432
Rev. William D. Lewis	133 Kingswood Drive, Dallas, PA 18612-1432
Janet T. McCabe	311 Clark Street, Clarks Green, PA 18411
Robert S. Montgomery, Jr. (Hon.)	42 Grand Boulevard, Binghamton, NY 13905
Rosanne Mulligan	18 Dorothy Road, Apalachin, NY 13732
Tanya Olaviany	15 Allen Drive, Larksville, PA 18704
Margaret (Ann) Ray	46 Stites Street, West Wyoming, PA 18644

Philip Reid (Hon.)	145 Honey Bee Lane, Monroe Twp., PA 18618
Elaine Semanski	86 Noyes Avenue, Swoyersville, PA 18704
Blenda Smith (Hon.)	133 Helen Street, Binghamton, NY 13905
Betty Stanton	40 East Street, Binghamton, NY 13904
William Starr	535 Butler Avenue, Wyoming, PA 18644
Kendra Summers	418 Firth Street, Endicott, NY 13760
Charlotte Thomas	138 Carroll Street, Pittston, PA 18640
John Welch (Hon.)	103 Lane Hill Road, Tunkhannock, PA 18657
Rev. James Wert (Hon.)	Wildfowler Village, 317 Bluebell Ct., Exeter, PA 18643
Cathy Williams	14 Laurel Avenue, Binghamton, NY 13905

3. The names titles, and addresses of each of the officers of the Corporation are as follows:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Sharon (Calli) Berg	Chair	106 Pollock Drive Binghamton, NY 13905
John Crouse	Vice Chair	714 Griffin Pond Road S. Abington Twp., PA 18411
Robert S. Montgomery, Jr	Secretary	46 Grand Boulevard Binghamton, NY 13905

Rosanne Mulligan Assistant Secretary 18 Dorothy Road
Apalachin, NY 13732

Rev. William D. Lewis Treasurer 133 Kingswood Drive
Dallas, PA 18612-1432

Edwin G. Betz Assistant Treasurer 2 Sequoia Lane,
Apalachin, NY 13732

4. The purposes for which the corporation was organized are as follows:

To provide elderly persons and handicapped persons in need of such facilities with skilled nursing home facilities and services designed to meet their physical, social and psychological needs, and to promote their health, security, happiness and usefulness in longer living, the charges for such facilities and services to be predicated upon the provision, maintenance and operation thereof on a non-profit basis. The Corporation is organized exclusively to develop, establish, operate and maintain a skilled nursing home project.

5. The corporation is a charitable corporation.

6. The corporation plans to dissolve in accordance with the plan of dissolution attached hereto as Exhibit "B" (the "Plan").

7. The corporation is dissolving because the corporation has no assets or liabilities and it is in the best interest of the corporation.

8. The Board of Directors by unanimous written consent, dated February 26, 2020 approved resolutions adopting the Plan, and authorizing the filing of the Certificate of Dissolution. Such written consent is attached hereto as Exhibit "C".

9. After the Board of Directors approved the Plan, the members received and reviewed it and by unanimous written consent voted in favor of adoption of the Plan. Such unanimous written consent is attached hereto as Exhibit "D".

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. Copies of any governmental approvals to the Plan are set forth in the Plan and 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 The Grace View Manor Nursing Home Corporation, a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this ___ day of _____, 202__ by

 Robert S. Montgomery, Jr.
 Secretary

Verification

STATE OF NEW YORK)
 :SS.:
 COUNTY OF BROOME)

Robert S. Montgomery, Jr., being duly sworn, deposes and says:

I am the Secretary of The Grace View Manor Nursing Home Corporation, the corporation named in the above Petition. I make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

 Sworn to before me this _____ day of _____, 202__.

 Notary Public

Plan of Dissolution
of
The Grace View Manor Nursing Home Corporation

The Board of Directors of The Grace View Manor Nursing Home Corporation (the "Corporation") has considered the advisability of voluntarily dissolving the Corporation and has determined that dissolution is in the best interest of the Corporation.

1. The Corporation has no assets or liabilities.

2. In addition to New York 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:

- The Public Health and Health Planning Council
- New York State Department of Taxation and Finance

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


Sharon J. Berg, Chair of the Board of
Directors

2/26/2020
Date

Certificate of Dissolution of The Grace View Manor Nursing Home
Corporation
Pursuant to Section 1003 of the Not-for-Profit Corporation Law

I, Robert S. Montgomery, Jr., the Secretary of The Grace View Manor Nursing Home Corporation hereby certify:

1. The name of this Corporation is The Grace View Manor Nursing Home Corporation (the "Corporation").
2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on the 6th day of May, 1991.
3. The names and addresses of each of the directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Rev. Nancy Adams	7 Beethoven Street, Binghamton, NY 13905
Emil Augustine	228 Pollock Drive, Pittston, PA 18640
Sharon (Calli) Berg	106 Pollock Drive, Pittston, PA 18640
Edwin G. Betz	2 Sequoia Lane, Apalachin, NY 13732
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Rev. James Wert (Hon.)	Wildfowler Village, 317 Bluebell Ct., Exeter, PA 18643
Cathy Williams	14 Laurel Avenue, Binghamton, NY 13905

4. The names titles, and addresses of each of the officers of the Corporation are as follows:

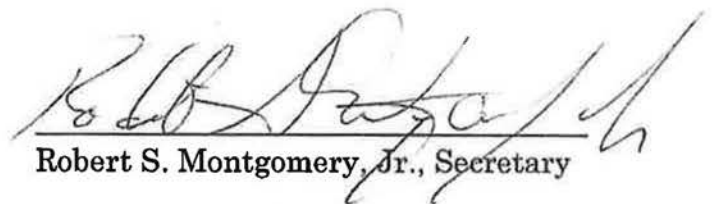
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Robert S. Montgomery, Jr	Secretary	46 Grand Boulevard Binghamton, NY 13905
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Rev. William D. Lewis Treasurer 133 Kingswood Drive
Dallas, PA 18612-1432

Edwin G. Betz Assistant Treasurer 2 Sequoia Lane,
Apalachin, NY 13732

5. Dissolution of the Corporation was authorized by unanimous written consent of the Board, and also by unanimous written consent of the members of the Corporation.
6. The Corporation elects to dissolve.
7. At the time of dissolution, the Corporation is a Type B corporation.
8. The Corporation, pursuant to N-PCL § 1002(d), shall file with the Attorney General a copy of its Plan of Dissolution.
9. The Plan of Dissolution filed with the Attorney General shall include a statement, required pursuant to N-PCL § 1001(b), that at the time of dissolution, the Corporation had no assets or liabilities.
10. The Corporation has no assets or liabilities.
11. The Corporation does not hold any assets at the time of authorization of its Plan of Dissolution that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.
12. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed the Certificate of Dissolution this 31st day of August, 2022.


Robert S. Montgomery, Jr., Secretary

CERTIFICATE OF DISSOLUTION
OF
THE GRACE VIEW MANOR NURSING HOME CORPORATION

Pursuant to Section 1003 of the Not-for-Profit Corporation
Law of the State of New York

Filed by: Levene Gouldin & Thompson, LLP
450 Plaza Drive
Vestal, New York 13850

Restated Certificate of Incorporation

of

The Grace View Manor Nursing Home Corporation

Under Section 805 of the
Not-for-Profit Corporation Law

We, the undersigned, for the purpose of amending and restating the Certificate of Incorporation of The Grace View Manor Nursing Home Corporation under Section 805 of the Not-for-Profit Corporation Law of the State of New York, do hereby certify:

ONE: The name of the corporation is THE GRACE VIEW MANOR NURSING HOME CORPORATION, hereinafter referred to as the "Corporation".

TWO: The date its Certificate of Incorporation was filed with the Department of State was May 6, 1991 under the Not-for-Profit Corporation Law of the State of New York.

THREE: The Certificate of Incorporation is amended to effect the following amendments:

- (a) To designate the Secretary of State as agent of the Corporation upon whom process against it may be served and the post office address within or without this state to which the Secretary of State shall mail a copy of any process against it served upon him;
 - (b) To add paragraph TWELFTH relating to the provisions of the Certificate of Incorporation;
 - (c) To add paragraph THIRTEENTH relating to the classification of the corporation;
- and
- (d) To renumber and reletter the paragraphs of the Certificate of Incorporation after the amendments referenced above are made.

FOUR: The text of the Certificate of Incorporation of the Corporation is hereby restated as amended to read as herein set forth in full as follows:

CERTIFICATE OF INCORPORATION

OF

THE GRACE VIEW MANOR NURSING HOME CORPORATION

Under Section 402 of the
Not-for-Profit Corporation Law

FIRST: The name of the corporation is THE GRACE VIEW MANOR NURSING HOME CORPORATION, hereinafter referred to as "the Corporation".

SECOND: The duration of the Corporation shall be perpetual.

THIRD: The principal office of the Corporation is to be located in the County of Broome and State of New York.

FOURTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against it served upon him shall be 10 Acre Place, Binghamton, New York 13904.

FIFTH: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and shall be a type B corporation under ~~Section 201~~ of the Not-For-Profit Corporation Law. The purposes for which the Corporation is formed, and the business and objects to be carried on and promoted by it, are as follows:

(a) To provide elderly persons and handicapped persons in need of such facilities with skilled nursing home facilities and services designed to meet their physical, social and psychological needs, and to promote their health, security, happiness and usefulness in longer living, the charges for such facilities and services to be predicated upon the provision, maintenance and operation thereof on a non-profit basis. The Corporation is organized exclusively to develop, establish, operate and maintain a skilled nursing home project.

(b) The Corporation is irrevocably dedicated to and operated exclusively for, non-profit purposes; and all income and earnings of the Corporation shall be used exclusively for corporate purposes. No part of the net earnings of the Corporation shall inure to the benefit of any member, trustee, director, officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no member, trustee, officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

(c) Nothing contained herein shall authorize the corporation to establish or operate any adult care facility, or to solicit contributions for any such purpose, or to perform any of the other activities set forth in Section 404(b) through 404(u) of the Not-For-Profit Corporation Law or Section 460-a of the Social Services Law of the State of New York, without first obtaining any and all of the consents or approvals required pursuant to Section 404(b) through 404(u) of the Not-For-Profit Corporation Law or Section 460-a of the Social Services Law of the State of New York.

(d) To create a private corporation to construct or to acquire a skilled nursing home project, and to operate the same; to enable the financing of the construction or acquisition of such project with the assistance of mortgage insurance under the National Housing Act; to enter into, perform, and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the corporation, including, expressly, any contract or contracts with the Secretary of Housing and Urban Development which may be desirable or necessary to comply with the requirements of the National Housing Act, as amended, and the Regulations of the Secretary thereunder, relating to the regulation or restriction of mortgagors as to charges, capital structure, rate of return and methods of operation; to acquire any property, real or personal, in fee or under lease or any rights therein or appurtenant thereto, necessary for the construction and operation of such project; and to borrow money, and to issue evidence of indebtedness, and to secure the same by mortgage, deed of trust, pledge, or other lien, in furtherance of any or all of the objects of its business in connection with said project.

(e) Notwithstanding any other provisions of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the purposes as specified in §501(c)(3) of the Internal Revenue Code of 1986, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under IRC §501(c)(3) or corresponding provisions of any subsequent Federal tax laws.

SIXTH: The Corporation is empowered:

(a) To buy, own, sell, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes set forth in paragraph FIFTH hereof.

(b) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property.

(c) To do and perform all acts reasonably necessary or incidental to accomplish the purposes of the Corporation.

(d) Specifically and particularly, to enter into a Regulatory Agreement setting out the requirements of the Secretary of Housing and Urban Development.

(e) In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all of the remaining assets and property of the Corporation shall after payment of necessary expenses thereof be distributed to such organizations as shall qualify under section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal tax laws. Any conveyance of the Corporation's property upon the dissolution of the Corporation or the winding up of its affairs shall be subject to the approval of a Justice of the Supreme Court of the State of New York.

SEVENTH: All approvals or consents required before this Certificate may be filed by the Secretary of State are endorsed upon or annexed to this Certificate.

EIGHTH: The number of Directors of the Corporation shall be not less than six (6) or more than forty-eight (48), and shall be elected by the members of the Corporation from the membership. The Directors of the Corporation must, at all times, be members of the Corporation. No non-member of the Corporation may sit as a Director.

The Directors shall serve without compensation.

Membership in the Corporation shall, at all times, be limited to individuals who are a Director of the Methodist Homes for the Aging of the Wyoming Conference in the State of New York. In the event that a member of the Corporation ceases to be a Director of the Methodist Homes for the Aging of the Wyoming Conference in the State of New York, then such shall constitute automatic resignation as a member and director of the Corporation.

The Officers of the Corporation, as provided by the Bylaws of the Corporation, shall be elected by the Directors of the Corporation, in the manner therein set out, and shall serve until their successors are elected and have qualified. The Directors shall elect the regular officers of the Corporation at the annual meeting, for terms of one (1) year. The Secretary and Treasurer may be one and the same person, and need not be a Director of the Corporation.

NINTH: The Bylaws of the Corporation may be adopted by the Directors at any regular meeting or any special meeting called for that purpose, so long as they are not inconsistent with the provisions of this Certificate of Incorporation.

TENTH: No substantial part of the activities of the Corporation shall involve the carrying on of propaganda or otherwise attempting to influence legislation [except as otherwise provided in Internal Revenue Code Section 501(h)] and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidates for public office.

ELEVENTH: If a director, officer or committee member of the Corporation is made a party to any civil or criminal action or proceeding in any matter arising from the performance by such

director, officer or committee member of his or her duties for or on behalf of the Corporation, then, to the full extent permitted by law, the Corporation, upon affirmative vote of the board of directors, a quorum of directors being present at the time of the vote who are not parties to the action or proceeding, or if such a quorum is not obtainable, upon the written opinion of independent legal counsel that such action is appropriate, shall:

(1) Advance to such director, officer or committee member all sums found by the board, so voting, or found by independent legal counsel, as the case may be, to be necessary and appropriate to enable the director, officer or committee member to conduct his or her defense, or appeal, in the action or proceeding; and

(2) indemnify such director, officer or committee member for all sums paid by him or her in the way of judgments, fines, amounts paid in settlement, and reasonable expenses, including attorneys' fees actually and necessarily incurred, in connection with the action or proceeding, or appeal therein, subject to the proper application of credit for any sums advanced to the director, officer or committee member pursuant to clause (1) of this paragraph.

TWELFTH: In any taxable year in which the Corporation is a private foundation as described in I.R.C. Section 509, the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under I.R.C. Section 4942, and the Corporation shall not (a) engage in any act of self-dealing as defined in I.R.C. Section 4941(d), retain any excess business holdings as defined in I.R.C. Section 4943(c), (b) make any investments in such manner as to subject the Corporation to tax under I.R.C. Section 4944, or (c) make any taxable expenditures as defined in I.R.C. Section 4945(d) or corresponding provisions of any subsequent Federal tax laws.

THIRTEENTH: The Corporation is a supporting organization of The Methodist Homes for the Aging of the Wyoming Conference in the State of New York within the meaning of Section 509(a)(3) of the Internal Revenue Code of 1986.

This Restatement of the Certificate of Incorporation of the Corporation was authorized by a vote of a majority of all members entitled to vote thereon at a meeting of the members.

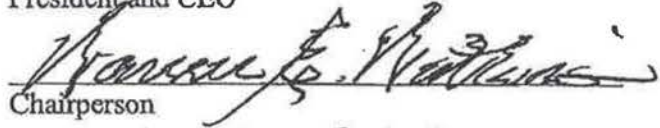
IN WITNESS WHEREOF, this certificate has been executed this 31st day of August, 2010, and is affirmed by the signers hereof as true under the penalties of perjury.

Dated: August 31, 2010

THE GRACE VIEW MANOR NURSING HOME CORPORATION



Keith D. Chadwick
President and CEO



Chairperson



Secretary

100902000 556

RESTATED CERTIFICATE OF INCORPORATION

OF

THE GRACE VIEW MANOR NURSING HOME CORPORATION

Under Section 805 of the Not-for-Profit Corporation Law
of the State of New York

Filed by: Levene Gouldin & Thompson, LLP
450 Plaza Drive
Vestal, New York 13850

DRAWDOWN
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lcc
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP 03 2010
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BY: *[Signature]*
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FILING RECEIPT

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ENTITY NAME: THE GRACE VIEW MANOR NURSING HOME CORPORATION

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PROCESS PROVISIONS

COUNTY: BROO

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FILED:09/28/2010 DURATION:***** CASH#:100928000180 FILM #:100928000172

FILER:

LEVENE GOULDIN & THOMPSON, LLP
450 PLAZA DRIVE

VESTAL, NY 13850

ADDRESS FOR PROCESS:

THE CORPORATION
10 ACRE PLACE
BINGHAMTON, NY 13904

REGISTERED AGENT:



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SERVICE COMPANY: DELANEY CORPORATE SERVICES LTD. - 30

SERVICE CODE: 30

FEEs 90.00

FILING 30.00
TAX 0.00
CERT 0.00
COPIES 10.00
HANDLING 50.00

PAYMENTS 90.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 90.00
OPAL 0.00
REFUND 0.00

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE GRACE VIEW MANOR NURSING HOME CORPORATION

Under Section 803 of the
Not-for-Profit Corporation Law

FIRST: The name of the corporation is The Grace View Manor Nursing Home Corporation.

SECOND: The certificate of incorporation was filed by the Department of State on May 6, 1991.

THIRD: The corporation was formed under the Not-for-Profit Corporation Law of the State of New York.

FOURTH: The corporation is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law.

FIFTH: The corporation is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

SIXTH: The amendments effected by this certificate of amendment are as follows:

Paragraph THIRTEENTH of the Certificate of Incorporation relating to the classification of the corporation is hereby renumbered as paragraph FIFTEENTH to read in its entirety as follows:

FIFTEENTH: The Corporation is a supporting organization of The Methodist Homes for the Aging of the Wyoming Conference in the State of New York within the meaning of Section 509(a)(3) of the Internal Revenue Code of 1986.

Paragraph THIRTEENTH relating to pecuniary gain or profit is hereby added to read in its entirety as follows:

THIRTEENTH: The Corporation does not contemplate pecuniary gain or profit, incidental or otherwise.

Paragraph FOURTEENTH relating to tax provisions of the corporation is hereby added to read in its entirety as follows:

FOURTEENTH: The Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity that would invalidate its status (a) as a corporation that is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Code, or (b) as a corporation, contributions to which are deductible under Section 170 of the Code.

SEVENTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is 10 Acre Place, Binghamton, New York 13904.

EIGHTH: The certificate of amendment was authorized by a vote of a majority of the members entitled to vote thereon at a meeting of the members.



(Signature)

President and CEO
(Signer's Title)

Keith D. Chadwick

(Print or Type Signer's Name)

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CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE GRACE VIEW MANOR NURSING HOME CORPORATION

Under Section 803 of the Not-for-Profit Corporation Law

Broun

Filed by: Levene Gouldin & Thompson, LLP
450 Plaza Drive
Vestal, New York 13850

BRAWDOWN
DELAWARE #30

LCC
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP 28 2010

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Broun

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BYLAWS
OF
THE GRACE VIEW MANOR NURSING HOME CORPORATION

ARTICLE I
CHARTER, PURPOSES AND STATEMENT OF MISSION

A. CHARTER

GRACE VIEW MANOR NURSING HOME CORPORATION, a New York Corporation, (the "Corporation") was formed under Section 402 of the Not-For-Profit Corporation Law of the State of New York, and had its Certificate of Incorporation filed with the Department of State of the State of New York.

B. PURPOSES

The purposes for which the Corporation is formed are those set forth in its Certificate of Incorporation as they are amended from time to time. In general, these purposes include the establishment, maintenance and operation of a nursing home facility in the City of Norwich, New York and providing for the social, religious, educational and physical welfare of the frail and ill and the indigent elderly and further these purposes include such incidental powers and purposes as are required to support such facilities and carry out such programs in the State of New York.

The Corporation is not formed for pecuniary or financial gain, and it is organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, and no part of the net earnings of, or gifts to, the Corporation shall inure to the benefit of any private shareholder or individual, except reasonable compensation for services rendered. 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 provision of these Bylaws, the Corporation shall not be permitted to carry on any other activities not permitted to be carried on by a Corporation exempt from taxation under Federal or New York law.

C. STATEMENT OF MISSION

GOVERNANCE

1. The membership of the Corporation should concern itself with the mission and ministry of the Corporation.
2. The Corporation's membership should be part of the Corporate policy-making process, but it delegates to the Board of Directors the task of determining and implementing policy between annual membership meetings with the obligation to report such policy matters to the membership of the Corporation at its next annual meeting.

MISSION, VISION AND VALUES

1. The mission of the Corporation is to provide skilled nursing home services with exceptional care and compassion.
2. The vision of the Corporation is to be the provider of choice.
3. The model of health care delivery adopted by the Corporation shall reflect the following core values:
 - a. Concern and understanding for the whole person;
 - b. A focus on education and wellness in pursuit of a full life;
 - c. Independence, dignity and a sense of control for all residents;
 - d. Caring and compassion in the employees of the Corporation.

and

ARTICLE II
MEMBERSHIP

- A. Members - The members of the Corporation shall be the same persons who serve as members of the Board of Directors of UMH NY Corp.
- B. Meetings of Membership - The annual membership meeting of the Corporation shall be held prior to the third regular meeting of the Board of Directors in each year. The Secretary of the Corporation shall cause to be given to every member, a notice in writing stating the date, time and place of such meeting at least ten (10) days prior thereto.

C. Special Meetings of Membership - Special meetings of the membership of the Corporation may be called by the Chairman of the Board or, in the absence of the Chairman of the Board, by the Vice Chairman of the Board, and shall be called at the written request of three (3) members of the Board. The Secretary of the Corporation shall cause to be given to every member, as above, a notice in writing stating the date, time and place of such meeting, at least ten (10) days prior thereto, and further setting forth the reasons for such a meeting and the business to be transacted at such meeting. No other business but that specified in the notice may be transacted at such special meeting.

A copy of the notice of any meeting shall be given, personally, by mail, or by facsimile telecommunications or by electronic mail, to each member entitled to vote at such meeting. If the notice is given personally, by first class mail or by facsimile telecommunications or by electronic mail, it shall be given not less than ten nor more than fifty days before the date of the meeting; if mailed by any other class of mail, it shall be given not less than thirty nor more than sixty days before such date. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the member at his address as it appears on the record of members, or, if he shall have filed with the secretary of the corporation a written request that notices to him be mailed to some other address, then directed to him at such other address. If sent by facsimile telecommunication or mailed electronically, such notice is given when directed to the member's fax number or electronic mail address as it appears on the record of members, or, to such fax number or other electronic mail address as filed with the secretary of the corporation. Notwithstanding the foregoing, such notice shall not be deemed to have been given electronically (1) if the corporation is unable to deliver two consecutive notices to the member by facsimile telecommunication or electronic mail; or (2) the corporation otherwise becomes aware that notices cannot be delivered to the member by facsimile telecommunication or electronic mail.

The Corporation shall also prominently post notice of such meeting on the homepage of any website maintained by the Corporation continuously from the date of publication through the date of the meeting. A Corporation shall send notice of meeting by first class mail to any member who requests in writing that such notices be delivered by such method.

Notice of meeting need not be given to any member who submits a waiver of notice, in person or by proxy, whether before or after the meeting. Waiver of notice may be written or electronic. If written, the waiver must be executed by the member by signing such waiver or causing his signature to be affixed to such waiver by any reasonable means, including, but not limited to facsimile signature. If electronic, the transmission of the waiver must be sent by electronic mail and set forth, or be submitted with, information from which is can reasonably be determined that the transmission was authorized by the member. The attendance of any member at a

meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him.

Whenever, under this chapter, members are required or permitted to take any action by vote, such action may be taken without a meeting upon the consent of all of the members entitled to vote thereon, which consent shall set forth the action so taken. Such consent may be written or electronic. If written, the consent must be executed by the member by signing such consent or causing his signature to be affixed to such waiver by any reasonable means including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the member.

Written or electronic consent thus given by all members entitled to vote shall have the same effect as a unanimous vote of members.

ARTICLE III BOARD OF DIRECTORS

- A. Composition of the Board - The Directors of the Corporation shall be the same persons serving from time to time as Directors of UMH NY Corp.
- B. Title of Property - All real estate, bonds, stock, securities, monies and funds of every kind or character conveyed, devised or granted to the Corporation, or to which the Corporation may become entitled, shall be held subject to the laws of New York applicable thereto, in the name of such Corporation, for the prosecution of its programs for the aging, or in the event such Corporation shall cease or fail of such purpose, such property shall be held for the use or benefit of UMH NY Corp. for the prosecution of its program for the care of the aging. The Board will report annually to the meeting of the members of the Corporation.
- C. Directors Meeting - Regular meetings of the Board of Directors shall be held at least four (4) times annually and at such other times as may be deemed necessary. Notice of said meetings shall be given to each Director at least ten (10) days prior to the meeting, and shall state the time and place thereof.

Special meetings of the Board of Directors may be called by the Chairman of the Board or, in the absence of the Chairman of the Board, by the Vice Chairman of the Board, and shall be called at the written request of three (3) members of the Board. Notice of such meeting to be given to each Director at least ten (10) days before such meeting, with specific statement of the business at the special meeting, and no other business except that specified in the call therefore may be transacted at such special meeting.

Any one or more members of the Board of Directors who is not physically present at a meeting may participate in a meeting of the Board of Directors, whether such meeting is a regular or special meeting, by means of a conference telephone or similar communications equipment or by electronic video screen communication allowing all persons participating in the meeting to hear each other at the same time and allowing each director 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. Participation by such means shall constitute presence in person at a meeting.

Notice of a meeting of the Board, whether such meeting is a regular or special meeting, may be sent by regular mail, or by facsimile transmission or electronic mail where the director has provided the Secretary with the director's facsimile number or electronic mail address, as the case may be.

Notice of a meeting need not be given to any director who submits a waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the director signing such waiver or causing his or her signature to be affixed to such waiver by any reasonable means including but not limited to facsimile signature. If electronic, the transmission of the waiver must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director.

Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board consent to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by the director by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director. The resolution and the written consents thereto by the members of the Board shall be filed with the minutes of the proceedings of the Board.

D. Independent Director - When used in these bylaws, "independent director" means a director who: (i) is not, and has not been within the last three years, an employee of the Corporation or an affiliate of the Corporation, and does 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; (ii) has not received, and does not have a relative who has received, in any of the last three fiscal years, more than ten thousand dollars in direct compensation from the Corporation or an affiliate of the

Corporation (other than reimbursement for expenses reasonably incurred as a director or reasonable compensation for service as a director); and (iii) is not a current employee of or does not have a substantial financial interest in, and does 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 or an affiliate of the Corporation for property or services in an amount which, in any of the last three fiscal years, exceeds the lesser of twenty-five thousand dollars or two percent of such entity's consolidated gross revenues. For purposes of this paragraph, "payment" does not include charitable contributions.

E. Quorum - Eight (8) members of the Board of Directors shall constitute a quorum at any regular or special meeting thereof.

ARTICLE IV OFFICERS

A. The officers of the Corporation shall be a Chairman of the Board, a Vice Chairman of the Board, a Secretary, an Assistant Secretary, a Treasurer, and an Assistant Treasurer, elected annually by the Board of Directors at a meeting of the Board of Directors held after the annual election of the Board of Directors, together with such additional officers as may be designated from time to time by the Board of Directors, to hold office until their respective successors shall have been duly elected. The Board of Directors shall have the power to fill any vacancy in the foregoing offices. Each and all officers of the Corporation must be a Director determined pursuant to Article III of these bylaws or an honorary director determined pursuant to Article VIII of these bylaws.

B. The Chairman of the Board shall preside at all meetings of the Board of Directors and shall have general charge and direction of the business of the Board and be Ex Officio a member of all committees. He shall sign and execute all authorized bonds, contracts, deeds and other obligations in the name of the Corporation and shall perform such other duties as may from time to time be designated by the Board. He shall also perform all duties incident to the office of Chairman and such other duties as may be prescribed by the Board from time to time. He shall initiate, coordinate, and oversee the work of the officers and committees of the Corporation in order that its purposes may be promoted. The Chairman shall meet with the President/CEO periodically, and may delegate to the President/CEO his authority to execute contracts and other documents on behalf of the Corporation.

C. The Vice Chairman of the Board may act for the Chairman of the Board in case of his absence or disability.

D. The Secretary shall cause to be kept all of the records of the Corporation except the financial records, shall record the minutes of the meetings of the Corporation and of the Board, send out all notices of meetings, attest to the seal of the Corporation where necessary or required, and perform such other duties as may be prescribed by the Board or Chairman of the Board. The Secretary shall also keep or cause to be kept a current register of names and addresses of each member of the Corporation.

E. The Assistant Secretary may act for the Secretary in case of his absence or disability.

F. The Treasurer, acting with the Executive/Finance/Audit Committee of the Corporation, shall insure that a true and accurate accounting of the financial transactions of the Corporations is made and that such accounting is presented to and made available to the Board.

G. The Assistant Treasurer may act for the Treasurer in case of his absence or Disability.

H. Acceptance of appointment to the Board of Directors involves regular attendance at all Board meetings. The directorship of any appointed Director who is absent for two (2) successive meetings, without written explanation satisfactory to the Board, may be removed by Board Action.

I. No employee or former employee of the Corporation or any affiliate of the Corporation shall serve as Chair of the Board or hold any other office of the Board, or serve as a director of the Corporation.

ARTICLE V
COMMITTEES

A. Committees - There shall be constituted annually by appointment by the Chairman of the Board, to be approved by the Board, Committees of the Board designated Compliance Oversight, Directors, Executive/Finance/Audit, Governance, Investment, Management & Personnel, Property and Strategic Positioning. In addition, there shall be constituted annually by appointment of the Chairman, to be approved by the Board, a Committee of the Corporation designated Quality Assurance Performance Improvement. Only Directors are eligible to serve on Committees of the Board. Directors and non-Board persons are eligible to serve on Committees of the Corporation but only Directors determined pursuant to Article III shall have the right to make and second motions and vote in committees. Committees of the Corporation may not bind the Corporation. The duties of the several Committees shall be as follows:

Compliance Oversight - The Compliance Oversight Committee shall provide oversight for the compliance of the Corporation and ensure that the Corporation has adopted and implemented policies and procedures that will ensure compliance with all applicable laws, regulations, and policies. The compliance committee will review and address matters relating to the compliance program. In so doing, it will:

- Assist the board of directors in fulfilling its responsibilities relating to legal and financial compliance with applicable laws, regulatory requirements, industry guidelines, and policies;
- Provide a vehicle for communication between the board of directors and management with respect to compliance; and
- Make recommendations to the board of directors that will assist the Corporation in conducting its activities in full compliance with applicable laws, regulations, policies and the Corporation's code of conduct.

In addition, the Compliance Oversight Committee shall oversee the adoption, implementation of and compliance with the conflict of interest policy and whistleblower policy adopted by the Corporation.

Only independent directors are eligible to serve on the Compliance Oversight Committee.

Quality Assurance Performance Improvement - The Quality Assurance Performance Improvement Committee shall provide oversight for the quality of care and services delivered by the Corporation and ensure that the Corporation has adopted and implemented policies and procedures that will ensure quality of care and optimal quality of life for the residents the Corporation serves. In so doing, it will:

- Assist the board of directors in fulfilling its responsibilities relating to the provision of quality care and services and optimizing resident quality of life;
- Provide a vehicle for communication between the board of directors and management with respect to quality; and
- Make recommendations to the board of directors that will assist the Corporation in implementing quality initiatives.

Directors - The committee will consist of a minimum of five Board members. It will be concerned with the effective perpetuation of the Board. Within this focus, the committee will:

- A. Monitor attendance.
- B. Develop and maintain a Board Profile.
- C. Communicate with directors to maintain a pool of potential directors.
- D. Recommend to the Board candidates for directorship when vacancies occur.
- E. Recommend to the Board an annual slate of officers.
- F. Evaluate annually the participation of Board members.

Executive/Finance/Audit Committee – The Executive/Finance/Audit Committee shall be composed of the Board Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, the chairs of the Committees of the Board and Committees of the Corporation, and no more than two (2) Directors, whether determined pursuant to Article III or determined pursuant to Article IX, appointed by the Board Chairman; provided, however, that only independent directors are eligible to serve on this Committee, and any director who is not an independent director but otherwise would be a member of this Committee shall not serve on this Committee.

The Executive/Finance/Audit Committee is authorized to exercise all the authority of the Board, which may be lawfully delegated to it.

The Executive/Finance/Audit Committee, to the extent that the law permits, has the full power of the Board to act for and bind the Corporation, except that the action of the full Board is required to hire or discharge the President/CEO and to fix his or her salary, to approve the budget and any modifications of the budget which results in an amount exceeding the total amount of the budget, or to commit the Corporation to any major construction or establishment of a new facility.

The Executive/Finance/Audit Committee is authorized to approve the purchase of real property, provided that if such property would, upon purchase thereof, constitute all, or substantially all, of the assets of the Corporation, then the approval of the Board shall be required. In addition, the Executive/Finance/Audit Committee is authorized, to the extent permitted by law, to approve the sale, mortgage, lease, exchange or other disposition of the Corporation's real property, provided that if such property constitutes all, or substantially all, of the assets of the Corporation, then the approval of the Board shall be required. The

Executive/Finance/Audit Committee shall promptly report any such actions taken to the Board, and in no event after the next regularly scheduled meeting of the Board.

The Executive/Finance/Audit Committee shall see to it that the proper budgetary plans are prepared by the President/CEO, and shall supervise the financial program, formulate and promulgate all plans for the support of the Corporation and perform such other tasks as may be necessary to the proper financing of the program, subject to the will and order of the Board of Directors.

The Executive/Finance/Audit Committee shall further guide and direct the Corporation's interim accounting and financial reporting practices, evaluate adequacy and effectiveness of the system of internal accounting controls, and oversee any other matters relative to the Corporation's accounts and its financial affairs that the committee deems necessary.

The Committee shall oversee the accounting and financial reporting processes of the Corporation and the audit of the Corporation's financial statements. The Committee shall annually retain or renew the retention of an independent auditor to conduct the audit and, upon completion thereof, review the results of the audit and any related management letter with the independent auditor.

The Committee shall, in addition to those duties set forth in the preceding paragraph:

(1) review with the independent auditor the scope and planning of the audit prior to the audit's commencement;

(2) upon completion of the audit, review and discuss 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;

(3) annually consider the performance and independence of the independent auditor; and

(4) report on the Committee's activities to the board.

The Executive/Finance/Audit Committee of UMH NY Corp. may perform the audit duties required by this section for the Corporation.

The Executive/Finance/Audit Committee shall meet regularly, keep records of its meetings, and submit such records to the Board at the next meeting of the Board.

Six members of the committee shall constitute a quorum, and the action of said group shall be the action of the Executive/Finance/Audit Committee, provided, however, one of the six members must be either the Chairman or Vice Chairman of the Board. The committee shall meet at the call of the Chairman or any three members.

Governance – The Governance Committee shall endeavor to institutionalize best practices in board governance for the Board to follow, to include making recommendations regarding the size and composition of the Board, addressing, without limitation, the absolute numbers of Board members and the committee structure.

The Governance Committee shall also conduct an annual evaluation of the overall effectiveness of the Board. This evaluation, and resulting recommendations, shall address, but is not limited to:

- The Board's structure and composition;
- The Board's independence, commitment, and accountability;
- The Board's involvement in setting strategy for the organization and monitoring its execution;
- The Board's oversight of the CEO and monitoring of CEO succession planning;
- The Board's focus on the most critical issues and risks;
- The clarity between the roles of the Board and management;
- The adequacy of access to information, employees and experts in a timely manner; and
- The appropriateness of each of the committees of the Board and the functioning of the committees.

The Governance Committee shall establish, monitor, and recommend the purpose, structure and operations of the various committees of the Board, as well as the qualifications and criteria for membership on each committee and, as circumstances dictate, make any recommendations regarding periodic rotation of

directors among the committees and recommend any term limitations of service on any committee.

As may be appropriate, the Governance Committee may make recommendation to the Board for the creation of additional committees or the elimination of committees.

The Governance Committee will develop and recommend to the Board a set of corporate governance guidelines and keep abreast of developments with regard to corporate governance to enable the Committee to make recommendations to the Board in light of such developments as may be appropriate.

The Governance Committee shall oversee the development and implementation of an effective orientation program for new members of the Board.

The Governance Committee shall ensure that an effective CEO succession plan is in place and will assess and recommend to the Board a successor to the CEO in the event of a vacancy in the position, unless the Board designates another committee for this purpose.

Investment – The Investment Committee shall have at least three (3) members.

The Investment Committee's responsibilities shall include, without limitation, the following:

- Determine the investment risk tolerance of the Board and incorporate such risk tolerance into the investment policies recommended to the Board.
- Prepare proposed investment policies for the consideration of the Board and present and recommend such proposed investment policies to the Board for approval.
- Recommend to the Board the necessary structure of personnel, constituents, custodians, contractors, agents, and information sources necessary or desirable to accomplish the investment objectives and goals of the Board.
- Obtain and analyze reports received from the investment managers and/or custodians on a quarterly basis and provide such reports and other reports deemed necessary or desirable by the Committee to the Board to enable and ensure that the Board and the Committee members fulfill their fiduciary responsibilities.
- Report to the Board at each regularly scheduled meeting of the Board.

- Repeat the above procedures as often as deemed necessary by either the Board or the Committee.
- Annually review the investment policies of the Board and present any recommended changes to the Board for consideration.
- Perform such other activities, responsibilities, and duties pertaining to the investment of the funds and assets owned by the Corporation as are assigned to the Committee by the Board.
- Promptly inform the Board regarding all significant matters pertaining to the investment of the assets. The Board shall be kept apprised of major changes in investment strategy, portfolio structure, market value of the assets, and other matters significantly affecting the investment of the assets. The Board shall also be informed promptly of any significant changes in the ownership, affiliation, organizational structure, financial condition, or personnel staffing of managers and/or custodians of the investment portfolio.
- Periodically review relationships with brokers and custodians established and maintained by corporate staff to insure that no conflicts of interest are present which could compromise the execution of best judgment.
- Periodically review fees paid for services of brokers, custodians, and managers.

Management and Personnel – The Management and Personnel Committee shall cooperate, advise and consult with the President/CEO with regard to members of the staff, matters of employment, and all matters pertaining to the efficient, economical and charitable operation of the program, and act in an advisory capacity in all matters of policy and service.

Property – The Property Committee reviews and makes recommendations with respect to the maintenance of the grounds, fences, drives, gardens, lawns, buildings, furnishings, and such machinery and appliances as may be necessary for the proper care and uses of the Corporation upon any real property owned by the Corporation. Such committee shall also see that the buildings, roads, fences and all appurtenances are kept in the best possible condition, subject to the order of the Board of Directors.

Strategic Positioning – Become as knowledgeable as practicable about the various kinds of programs available in the field of care for the elderly, levels of care, and the market in the communities we presently serve, and those we may expand into. Implement this knowledge by review of existing programs in facilities other than those of the Corporation, noting advantages and disadvantages. Keep alert for

innovations, new programs or projects. Visit other facilities, attend seminars, take advantage of learning opportunities as appropriate. Coordinate knowledge and experience gained with the Corporation's management staff, to assure best use of such information toward developing new programs and/or expansion of those in existence. Knowledge may also be helpful in preventing problems that have occurred in facilities other than the Corporation's.

B. Other Committees - The Chairman of the Board shall appoint such other committees or sub-committees, or otherwise, as may be required from time to time.

C. Attendance by Telephone, etc. - Any one or more members of any committee who is not physically present at a meeting may participate in such meeting of such committee, whether such meeting is a regular or special meeting by means of a conference telephone or similar communications equipment or by electronic video screen communication allowing all persons participating in the meeting to hear each other at the same time and allowing each member to participate in all matters before the committee, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the committee. Participation by such means shall constitute presence in person at a meeting.

Notice of a meeting of a committee, whether such meeting is a regular or special meeting, may be sent by regular mail, or by facsimile transmission or electronic mail where the member has provided the Secretary with the member's facsimile number or electronic mail address, as the case may be.

Notice of a meeting need not be given to any member who submits a waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her. Such waiver of notice may be written or electronic. If written, the waiver must be executed by the member signing such waiver or causing his or her signature to be affixed to such waiver by any reasonable means including but not limited to facsimile signature. If electronic, the transmission of the waiver must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the member.

Any action required or permitted to be taken by any committee may be taken without a meeting if all members of the committee consent to the adoption of a resolution authorizing the action. Such consent may be written or electronic. If written, the consent must be executed by the member by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including, but not limited to, facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was

authorized by the member. The resolution and the written consents thereto by the members of the committee shall be filed with the minutes of the proceedings of the Board.

ARTICLE VI RELATED PARTY TRANSACTIONS

As used in these bylaws, “related party transaction” means any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the Corporation or any affiliate of the Corporation is a participant.

As used in these bylaws, “related party” means (i) any director, officer or key employee of the Corporation or any affiliate of the Corporation; (ii) any relative of any director, officer or key employee of the Corporation or any affiliate of the Corporation; or (iii) any entity in which any individual described in clauses (i) and (ii) of this subparagraph has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent.

As used in these bylaws, “key employee” means any person who is in a position to exercise substantial influence over the affairs of the Corporation, as referenced in 26 U.S.C. § 4958 (f) (1) (A) and further specified in 26 CFR § 53.4958-3(c), (d) and (e), or succeeding provisions.

As used in these bylaws, “relative” of an individual means his or her (i) spouse, ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren; or (ii) domestic partner as defined in section twenty-nine hundred ninety-four-a of the public health law of the State of New York.

The Corporation shall not enter into any related party transaction unless the transaction is determined by the Board to be fair, reasonable and in the Corporation’s best interest at the time of such determination. Any director, officer or key employee who has an interest in a related party transaction shall disclose in good faith to the Board, or an authorized committee thereof, the material facts concerning such interest.

With respect to any related party transaction involving the Corporation and in which a related party has a substantial financial interest, the Board of the Corporation, or an authorized committee thereof, shall:

- (1) Prior to entering into the transaction, consider alternative transactions to the extent available;
- (2) Approve the transaction by not less than a majority vote of the directors or committee members present at the meeting; and
- (3) Contemporaneously document in writing the basis for the Board or authorized committee's approval, including its consideration of any alternative transactions.

No related party may participate in deliberations or voting relating to matters set forth in this Article; provided that nothing in this Article shall prohibit the Board or authorized committee from requesting that a related party present information concerning a related party transaction at a Board or committee meeting prior to the commencement of deliberations or voting relating thereto.

Notwithstanding anything herein to the contrary, no loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Corporation to any of its directors or officers, or to any other corporation, firm, association or other entity in which one or more of the Corporation's directors or officers are directors or officers or hold a substantial financial interest.

ARTICLE VII PRESIDENT/CEO

The Board shall, upon proper nomination of the Management and Personnel Committee, select a President/CEO to act as the executive head of the Corporation. He shall also perform such duties as shall be assigned to him by the Board of Directors.

In no event shall the President/CEO, or any person being considered for such position, participate in the vote or deliberation regarding his or her compensation, other than to provide the Board or any committee with information as background or answer questions at a Board or committee meeting at the Board's or committee's request prior to the commencement of deliberations or voting relating thereto.

ARTICLE VIII AMENDMENTS

These Bylaws may be amended: (a) by a majority vote of the Board of Directors, meeting after ten (10) days prior notice to all Directors, of the time and place of such meeting and stating the purpose thereof, which amendment or amendments, if so adopted by the Directors, shall be submitted to the next annual

membership meeting of the Corporation for approval or disapproval: or (b) by a majority vote at a Membership meeting, called as hereinabove set forth.

ARTICLE IX
HONORARY DIRECTORS

1. Honorary Directors of the Board are the same persons serving as honorary directors of The Methodist Homes for the Aging of the Wyoming Conference in the State of New York.
2. Honorary Directors will have all the rights and privileges of a Director appointed pursuant to Article III of these By-Laws, except the right to make and second motions and the right to vote.

ARTICLE X
INDEMNIFICATION

If a director, officer or committee member of the Corporation is made a party to any civil or criminal action or proceeding in any matter arising from the performance by such director, officer or committee member of his or her duties for or on behalf of the Corporation, then, to the full extent permitted by law, the Corporation, upon affirmative vote of the board of directors, a quorum of directors being present at the time of the vote who are not parties to the action or proceeding, or if such a quorum is not obtainable, upon the written opinion of independent legal counsel that such action is appropriate, shall:

(1) Advance to such director, officer or committee member all sums found by the board, so voting, or found by independent legal counsel, as the case may be, to be necessary and appropriate to enable the director, officer or committee member to conduct his or her defense, or appeal, in the action or proceeding; and

(2) indemnify such director, officer or committee member for all sums paid by him or her in the way of judgments, fines, amounts paid in settlement, and reasonable expenses, including attorneys' fees actually and necessarily incurred, in connection with the action or proceeding, or appeal therein, subject to the proper application of credit for any sums advanced to the director, officer or committee member pursuant to clause (1) of this Article.

NOTE: PRONOUNS OF THE MASCULINE GENDER SHALL BE DEEMED PRONOUNS OF THE FEMININE GENDER AND PLURAL PRONOUNS SHALL BE DEEMED TO CHANGE TO SINGULAR PRONOUNS AND SINGULAR TO PLURAL WHERE THE CONTEXT OF THE BYLAWS REQUIRES.

**WRITTEN CONSENT
OF THE
MEMBERS OF
THE GRACE VIEW MANOR NURSING HOME CORPORATION**

Pursuant to Section 614 of the
New York Not-for-Profit Corporation Law

The undersigned, constituting all of the Members of The Grace View Manor Nursing Home Corporation (the "Corporation"), a New York not-for-profit corporation, do hereby consent to the adoption of, and do hereby adopt, the following resolutions by this consent (this "Consent") in lieu of a meeting:

RESOLVED, that dissolution is in the best interest of the Corporation and the Corporation shall voluntarily dissolve; and be it further

RESOLVED, that the Plan of Dissolution attached to this Consent is hereby approved; and be it further

RESOLVED, that any officer of the Corporation and/or the President and CEO of the Corporation are hereby authorized and directed to execute and deliver such Plan of Dissolution and proceed with the Plan of Dissolution subject to all of the terms, conditions and provisions therein, and take all actions necessary or desirable to dissolve the Corporation; and be it further


RESOLVED, that any officer of the Corporation and/or the President and CEO of the Corporation are hereby authorized to execute, perform and deliver the said Plan of Dissolution and any and all petitions to the New York Attorney General, requests for approval to the Public Health and Health Planning Council and New York State Department of Taxation and Finance, a Certificate of Dissolution, agreements, instruments and other documents necessary or desirable to dissolve the Corporation, and to take such other and further action as may be necessary or desirable to dissolve the Corporation; and be it further

RESOLVED, that this Consent may be executed in counterparts, each of which shall be considered an original and all of which together shall be considered one document.

The Secretary of the Corporation shall file this Consent in the minutes and proceedings of the Corporation.

IN WITNESS WHEREOF, the undersigned, constituting all of the Members of the Corporation, have executed this Consent effective as of the date set forth below.

Dated: February 26, 2020


Emil Augustine

Edwin Betz

Edwin Betz

Christina Boyd

Carol Coleman

Kathy Colling

Kathy Colling

Joseph Coons

Joseph Coons

John Crouse

John Crouse

Melissa Drabo

Robert W. Hall

Maryann Johnson

Maryann Johnson

Allan Kinsman

Lisa Lee

Lisa Lee

Sharron Lewis

Sharron Lewis

William D. Lewis

William D. Lewis

Janet McCabe

Janet McCabe

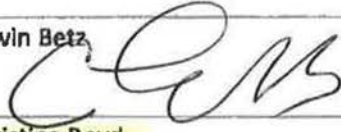
Robert S. Montgomery, Jr.

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Rosanne Mulligan

Rosanne Mulligan

Edwin Betz



Christina Boyd

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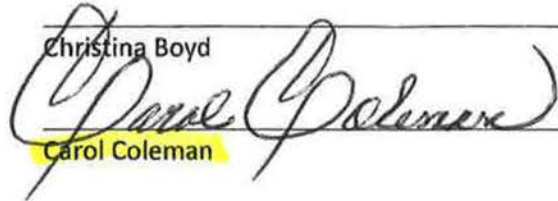
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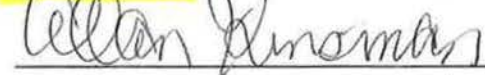
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Rosanne Mulligan

Dianne Posegate

Margaret Ann Ray
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Philip Reid
Philip Reid

Elaine Semanski

Betty Stanton
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William Starr
William Starr

Kenneth Summers, Jr.
Kenneth Summers, Jr.

Charlotte Thomas

Cathy Williams

Alan Hertel
Alan Hertel

Dianne Posegate

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Cathy Williams

**WRITTEN CONSENT
OF THE
DIRECTORS OF
THE GRACE VIEW MANOR NURSING HOME CORPORATION**

Pursuant to Section 708 of the
New York Not-for-Profit Corporation Law

The undersigned, constituting all of the Directors of The Grace View Manor Nursing Home Corporation (the "Corporation"), a New York not-for-profit corporation, do hereby consent to the adoption of, and do hereby adopt, the following resolutions by this consent (this "Consent") in lieu of a meeting:

RESOLVED, that dissolution is in the best interest of the Corporation and the Corporation shall voluntarily dissolve; and be it further

RESOLVED, that the Plan of Dissolution attached to this Consent is hereby approved; and be it further

RESOLVED, that any officer of the Corporation and/or the President and CEO of the Corporation are hereby authorized and directed to execute and deliver such Plan of Dissolution and proceed with the Plan of Dissolution, subject to all of the terms, conditions and provisions therein, and take all actions necessary or desirable to dissolve the Corporation; and be it further

RESOLVED, that any officer of the Corporation and/or the President and CEO of the Corporation are hereby authorized to execute, perform and deliver the said Plan of Dissolution and any and all petitions to the New York Attorney General, requests for approval to the Public Health and Health Planning Council and New York State Department of Taxation and Finance, a Certificate of Dissolution, agreements, instruments and other documents necessary or desirable to dissolve the Corporation, and to take such other and further action as may be necessary or desirable to dissolve the Corporation; and be it further

RESOLVED, that this Consent may be executed in counterparts, each of which shall be considered an original and all of which together shall be considered one document.

The Secretary of the Corporation shall file this Consent in the minutes and proceedings of the Corporation.

IN WITNESS WHEREOF, the undersigned, constituting all of the Directors of the Corporation, have executed this Consent effective as of the date set forth below.

Dated: February 26, 2020


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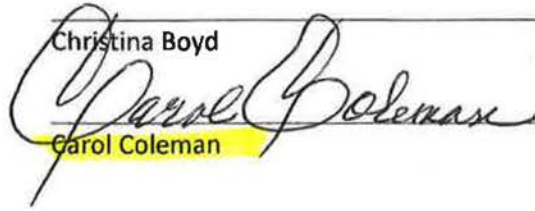
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Cathy Williams

MEMORANDUM

To: Kathy Marks
General Counsel

From: Jason Riegert
Deputy Director
Bureau of Program Counsel

Date: June 5, 2023

Subject: Manhattan Eye Foundation, Inc.; Proposed Certificate of Amendment to Certificate of Incorporation to change name to Manhattan Eye and Ear Ophthalmology Alumni 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 memo and kindly return to Vincent DiCocco for further processing.

Thank you.

MEMORANDUM

TO: Michael Stelluti
Division of Health Facility Planning

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

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

DATE: June 5, 2023

SUBJECT: Manhattan Eye Foundation, Inc.; Proposed Certificate of Amendment to Certificate of Incorporation to change name to Manhattan Eye and Ear Ophthalmology Alumni Foundation, Inc.

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) Letter from Michael Stringfellow from Garfunkel Wild P.C. representing the Foundation, dated June 21, 2022, explaining the intent of the proposed name change;
- 3) An electronic letter from Michael Stringfellow dated January 23, 2023, explaining the meaning of the proposed name change;
- 4) A copy of the executed Restated Certificate of Incorporation of The M.E.E.T. Ophthalmology Foundation, Inc. which changed the name to Manhattan Eye Foundation, Inc. dated July 31, 2001;
- 5) A copy of the Bylaws of Manhattan Eye Foundation, Inc.;
- 6) A copy of the Unanimous Written Consent of the Board of Directors of Manhattan Eye Foundation, Inc., dated January 7, 2020, consenting to the corporate name change; and
- 7) A copy of the proposed Certificate of Amendment of the Certificate of Incorporation of Manhattan Eye Foundation, Inc.

Attachments

cc: J. Corvino
M. Ngwashi

MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks
General Counsel
Division of Legal Affairs

Date: June 5, 2023

Subject: Manhattan Eye Foundation, Inc.; Proposed Certificate of Amendment to Certificate of Incorporation to change name to Manhattan Eye and Ear Ophthalmology Alumni Foundation, Inc.

The Manhattan Eye Foundation, Inc. (“the Foundation”), a New York not-for-profit corporation, is requesting Public Health and Health Planning Council (“PHHPC”) approval to change its corporate name to “Manhattan Eye and Ear Ophthalmology Alumni Foundation, Inc.”

The Manhattan Eye Foundation, Inc. was first established on June 30, 1977, under the name M.E.E.T. Ophthalmology Foundation, Inc. with a corporate purpose to provide financial support to the education of ophthalmology residents, fellows and attending physicians. On October 2, 2001, PHHPC approved the corporate name change to The Manhattan Eye Foundation, Inc.

The Foundation is requesting this subsequent name change to better reflect the Foundation’s stated goals of supporting not only the treatment of eye disorders, but ear and ophthalmological issues. Approval of PHHPC is required under the Not-for-Profit Corporation Law § 804(a)(i) and 10 NYCRR § 600.11(a)(1).

Attached is a letter dated June 21, 2022, from Michael Stringfellow from Garfunkel Wild P.C. representing the Foundation which explains the intent of the proposed name change, an electronic letter dated January 18, 2023 which explains the reasons behind the name change and the unanimous written consent of the Board of Directors of the Foundation. Also attached are the corporate documents of The Manhattan Eye Foundation, Inc. as well as the proposed Certificate of Incorporation. These documents have been reviewed.

There is no legal objection to the corporate name change and the Certificate of Amendment of the Certificate of Incorporation of Manhattan Eye Foundation Inc. is legally acceptable.

Attachments.

GARFUNKEL WILD, P.C.

ATTORNEYS AT LAW

111 GREAT NECK ROAD • GREAT NECK, NEW YORK 11021

TEL (516) 393-2200 • FAX (516) 466-5964

www.garfunkelwild.com

FILE NO.: 00299.0001

June 21, 2022

By FedEx

Ms. Colleen Frost
Executive Secretary, Department of Health
Empire State Plaza
Corning Towers, Room 1805
Albany, NY 12237

Re: Proposed Certificate of Amendment of Manhattan Eye Foundation, Inc.
("Foundation")

Dear Ms. Frost:

I enclose a copy of the proposed Certificate of Amendment of the Foundation. We request Public Health and Health Planning Council approval of this proposed Certificate of Amendment.

This amendment is being filed subsequent to the consent of the Board of Directors to change the name of the Foundation to Manhattan Eye and Ear Ophthalmology Alumni Foundation, Inc.

Also enclosed to aid you in your review is a copy of the Restated Certificate of Incorporation of the Foundation, which is its last filed charter document. There have been no subsequent amendments to the Certificate of Incorporation. Also enclosed is a self-addressed stamped envelope and affidavit.

Please contact me at (516) 393-2578 or via e-mail at mstringfellow@garfunkelwild.com, if there is any additional information that you require, or if you have any further questions.

Regards,


Michael Stringfellow
Paralegal

Enclosure

NEW YORK

NEW JERSEY

CONNECTICUT

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
MANHATTAN EYE FOUNDATION, INC.**

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the president of the Board of Directors of Manhattan Eye Foundation, Inc., hereby certifies:

1. The name of the corporation is MANHATTAN EYE FOUNDATION, INC. (the "Corporation"). The name under which the Corporation was formed was "M.E.E.T. Ophthalmology Foundation, Inc."

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on June 30, 1977 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL"). A Certificate of Amendment of the Certificate of Incorporation was filed on November 29, 1978 and a Restated Certificate of Incorporation of the Corporation was filed on April 11, 2008.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Certificate of Incorporation is hereby amended to effect the following change as authorized under subparagraph (b)(1) of Section 801 of the NPCL: Paragraph FIRST of the Certificate of Incorporation, which provides the name of the Corporation as Manhattan Eye Foundation, Inc. is hereby deleted in its entirety and replaced as follows:

“FIRST: The name of the Corporation is Manhattan Eye and Ear Ophthalmology Alumni Foundation, Inc.”

5. The Corporation’s Certificate of Incorporation is hereby further amended by the deletion of Article SIXTH in its entirety and replaced as follows:

“SIXTH: (a) Nothing contained in this Certificate shall authorize the Corporation to establish, operate or maintain a hospital, a home care services 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, or to provide hospital services or health related services or to solicit any funds, contributions or grants, from any source, for the establishment, operation or benefit of any hospital.

(b) Nothing contained in this Certificate shall authorize the Corporation to establish, operate or maintain an adult care facility as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purpose.

(c) Nothing herein shall authorize the Corporation to operate, maintain or manage a charter school, a nursery school, a kindergarten, an elementary school, a secondary school, a college, university or to advertise or offer credit-bearing courses or degrees in New York State.

(d) Except as authorized by Title VIII of the Education Law or other applicable statute, nothing herein shall authorize the Corporation to engage in the practice of any profession in New York, engage in the training of any profession in New York or to use a professional title or term of any profession in violation of Title VIII.

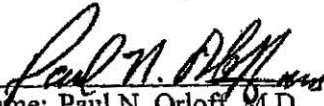
5. The Certificate of Incorporation is further amended to effect the following change as authorized under subparagraph (b)(7) of Section 801 of the NPCL: Paragraph TENTH of the Certificate of Incorporation, which provides the address to which the Secretary of State shall mail a copy of any process served, is hereby deleted in its entirety and replaced as follows:

“TENTH: The Secretary of State is hereby designated as the agent of the Corporation upon whom process may be served. 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 upon him or her is:

c/o The Corporation
Garfunkel Wild, P.C.
111 Great Neck Road, 6th Floor
Great Neck, NY 11021-5406
Attn: Doris L. Martin, Esq.”

6. This Amendment of the Certificate of Incorporation of the Corporation was authorized by unanimous written consent of the vote of the Board of Directors.

Dated: January 27, 2022


Name: Paul N. Orloff, M.D.
Title: President

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
MANHATTAN EYE FOUNDATION, INC.**

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

**FILED BY:
MICHAEL STRINGFELLOW, LEGAL ASSISTANT
GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NEW YORK 11021**

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
MANHATTAN EYE FOUNDATION, INC.

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the president of the Board of Directors of Manhattan Eye Foundation, Inc., hereby certifies:

1. The name of the corporation is MANHATTAN EYE FOUNDATION, INC. (the "Corporation"). The name under which the Corporation was formed was "M.E.E.T. Ophthalmology Foundation, Inc."

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on June 30, 1977 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL"). A Certificate of Amendment of the Certificate of Incorporation was filed on November 29, 1978 and a Restated Certificate of Incorporation of the Corporation was filed on April 11, 2008.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Certificate of Incorporation is hereby amended to effect the following change as authorized under subparagraph (b)(1) of Section 801 of the NPCL: Paragraph FIRST of the Certificate of Incorporation, which provides the name of the Corporation as Manhattan Eye Foundation, Inc. is hereby deleted in its entirety and replaced as follows:

"FIRST: The name of the Corporation is Manhattan Eye and Ear Ophthalmology Alumni Foundation, Inc."

5. The Corporation's Certificate of Incorporation is hereby further amended by the deletion of Article SIXTH in its entirety and replaced as follows:

"SIXTH: (a) Nothing contained in this Certificate shall authorize the Corporation to establish, operate or maintain a hospital, a home care services 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, or to provide hospital services or health related services or to solicit any funds, contributions or grants, from any source, for the establishment, operation or benefit of any hospital.

(b) Nothing contained in this Certificate shall authorize the Corporation to establish, operate or maintain an adult care facility as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purpose.

(c) Nothing herein shall authorize the Corporation to operate, maintain or manage a charter school, a nursery school, a kindergarten, an elementary school, a secondary school, a college, university or to advertise or offer credit-bearing courses or degrees in New York State.

(d) Except as authorized by Title VIII of the Education Law or other applicable statute, nothing herein shall authorize the Corporation to engage in the practice of any profession in New York, engage in the training of any profession in New York or to use a professional title or term of any profession in violation of Title VIII.

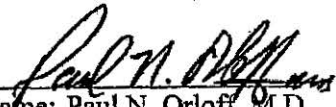
5. The Certificate of Incorporation is further amended to effect the following change as authorized under subparagraph (b)(7) of Section 801 of the NPCL: Paragraph TENTH of the Certificate of Incorporation, which provides the address to which the Secretary of State shall mail a copy of any process served, is hereby deleted in its entirety and replaced as follows:

“TENTH: The Secretary of State is hereby designated as the agent of the Corporation upon whom process may be served. 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 upon him or her is:

c/o The Corporation
Garfunkel Wild, P.C.
111 Great Neck Road, 6th Floor
Great Neck, NY 11021-5406
Attn: Doris L. Martin, Esq.”

6. This Amendment of the Certificate of Incorporation of the Corporation was authorized by unanimous written consent of the vote of the Board of Directors.

Dated: January 27, 2022


Name: Paul N. Orloff, M.D.
Title: President

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
MANHATTAN EYE FOUNDATION, INC.**

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

**FILED BY:
MICHAEL STRINGFELLOW, LEGAL ASSISTANT
GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NEW YORK 11021**

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF Bronx)

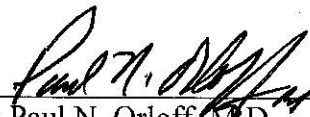
The undersigned, Paul N. Orloff, M.D., being duly sworn, deposes and says:

1. I am the duly appointed President of Manhattan Eye Foundation, Inc. (the "Corporation").

2. The Corporation is seeking approval under Section 803 of the N-PCL to amend its Certificate of Incorporation to change the name of the Corporation;


3. On behalf of the Corporation, the undersigned, as the President of the Corporation, hereby affirms that the current assets of the Corporation will be used for current purposes and powers, and future assets of the Corporation will be used for purposes and powers as stated in the restated certificate of incorporation.

The foregoing is true and correct to my knowledge.



Name: Paul N. Orloff, M.D.
Title: President

Sworn to before me this
30 day of April, 2022



Notary Public

Robert Newman
Notary Public, State of New York
No. 01NE5046573
Qualified in Bronx County
Term expires 7/17/2023

1020411000304

The University of the State of New York Department of Education



STATE OF NEW YORK :
: ss.:
COUNTY OF ALBANY :

Pursuant to the provisions of section 804 of the Not-for-Profit Corporation Law, consent is hereby given to the restated and amended certificate of incorporation THE M.E.E.T. OPHTHALMOLOGY FOUNDATION, INC., amending the corporate name and purposes, the name of which is amended to MANHATTAN EYE FOUNDATION, INC.

This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

This consent to filing is granted with the understandings and upon the conditions set forth on the reverse side of this form.

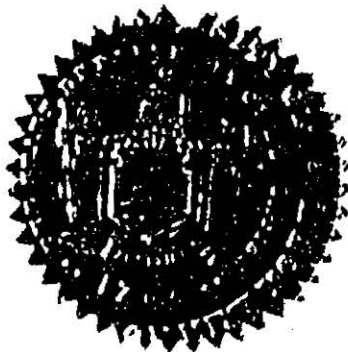
IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 25th day of October, 2001.

Richard P. Mills
Commissioner of Education

By:

[Handwritten signature of Richard L. Nabozny]

Richard L. Nabozny
Senior Attorney



This consent to filing is granted with the understanding that nothing contained in the annexed corporate document shall be construed as authorizing the corporation to engage in the practice of law, except as provided by subdivision 7 of section 495 of the Judiciary Law, or of any of the professions designated in Title VIII of the Education Law, or to conduct a school for any such profession, or to hold itself out to the public as offering professional services.

This consent to filing is granted with the further understanding that nothing contained in the annexed corporate document shall be construed as authorizing the corporation to operate or maintain a charter school, nursery school, kindergarten, elementary school, secondary school, institution of higher education, cable television facility, educational television station pursuant to section 236 of the Education Law, library, museum, or historical society, or to maintain an historic site.

This consent to filing shall not be deemed to be or to take the place of registration for the operation of a business school in accordance with the provisions of section 5001 of the Education Law, nor shall it be deemed to be, or to take the place of, a license granted by the Board of Regents for the operation of a private school pursuant to the provisions of section 5001 of the Education Law, a license granted by the Commissioner of Motor Vehicles pursuant to the provisions of section 394 of the Vehicle and Traffic Law, a license as an employment agency granted pursuant to section 172 of the General Business Law, or any other license, certificate, registration, or approval required by law.

CSC 45

RESTATED CERTIFICATE OF INCORPORATION
OF

THE M.E.E.T. OPHTHALMOLOGY FOUNDATION, INC.

(Under Section 805 of the Not-for-Profit
Corporation Law of the State of New York)

The undersigned, being the President of THE M.E.E.T. OPHTHALMOLOGY FOUNDATION, INC., a New York State not-for-profit corporation (the "Corporation"), does hereby certify and set forth:

- FIRST: The name of the Corporation is THE M.E.E.T. OPHTHALMOLOGY FOUNDATION, INC.
- SECOND: The Certificate of Incorporation of the Corporation was filed by the New York Secretary of State on June 30, 1977 pursuant to the Not-for-Profit Corporation Law of the State of New York under the name The M.E.E.T. Ophthalmology Foundation, Inc. A Certificate of Amendment of the Certificate of Incorporation of the Corporation was filed by the New York Secretary of State on November 29, 1978 pursuant to the Not-for-Profit Corporation Law of the State of New York under the name The M.E.E.T. Ophthalmology Foundation, Inc.
- THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York and is a Type B corporation under Section 201 of said law and the Corporation shall remain a Type B corporation after this amendment is effectuated.
- FOURTH:
 - (a) The Corporation's Certificate of Incorporation is hereby amended by the deletion of Article First and the addition of the following new Article First:
 - FIRST: The name of the corporation (hereinafter called the "Foundation") is MANHATTAN EYE FOUNDATION, INC.
 - (b) The Corporation's Certificate of Incorporation is hereby amended by the deletion of Sections A and B of Article Third and the addition of the following new Section A:
 - A. To support and encourage programs conducting, coordinating and sponsoring teaching and training programs

of resident and intern staffs and to improve patient care and in particular treatment and care of the eye and to improve mankind.

- (c) Existing Sections C through N of Article Third shall be re-lettered as Sections B through M, respectively.
- (d) The Corporation's Certificate of Incorporation is hereby amended by the deletion of Article SIXTH and the addition of the following new Article SIXTH:

SIXTH: Nothing contained in this Certificate shall authorize the Foundation to establish, operate or maintain a hospital, a home care services 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, or to provide hospital services or health related services or to solicit any funds, contributions or grants, from any source, for the establishment, operation or benefit of any hospital.

Nothing contained in this Certificate shall authorize the Foundation to establish, operate or maintain an adult care facility as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purpose.

- (e) The Corporation's Certificate of Incorporation is hereby amended by the deletion of Article SEVENTH and the addition of the following new Article SEVENTH:

SEVENTH: In the case of dissolution of the Corporation, the remaining assets and property of the Corporation after payment of necessary expenses shall be distributed to such organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or corresponding provision of any future United States Internal Revenue law), subject to an order of a Justice of the Supreme Court of the State of New York. No

distribution of any property or assets of the Corporation shall be applied other than to accomplish charitable, scientific and/or educational purposes.

- (f) The Corporation's Certificate of Incorporation is hereby amended by the deletion of Article EIGHTH and the addition of the following new Article EIGHTH:

EIGHTH: The office of the Foundation shall be located in the County of Nassau, State of New York.

- (g) The Corporation's Certificate of Incorporation is hereby amended by the deletion of Article TENTH and the addition of the following new Article TENTH:

TENTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process may be served. 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 upon him is:

Garfunkel, Wild & Travis, P.C.
111 Great Neck Road
Great Neck, New York 11021
Attention: George M. Garfunkel

FIFTH: This amendment was authorized by the unanimous written consent of the Board of Directors.

SIXTH: The text of the Certificate of Incorporation is hereby restated as amended in full:

**Restated Certificate
of Incorporation
of
MANHATTAN EYE FOUNDATION, INC.**

FIRST: The name of the proposed corporation (hereinafter called the "Foundation") is: MANHATTAN EYE FOUNDATION, INC.

SECOND: The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law and is a Type B corporation as defined in Section 201(b) (Purposes) of said law.

THIRD: The purposes for which the Foundation is formed are as follows:

- A. To support and encourage programs conducting, coordinating and sponsoring teaching and training programs of resident and intern staffs and to improve patient care and in particular treatment and care of the eye and to improve mankind.
- B. To encourage, promote, coordinate and sponsor medical research, by grants, contributions, or otherwise, all to the improvement of mankind's knowledge of medicine, diseases and cures thereof, and to this end to cooperate with hospitals, hospital organizations, universities, colleges, individuals, corporations, associations, governmental bodies or other agencies.
- C. To support students, interns, residents or physicians engaged in obtaining medical education or in conducting research, by grants, or by reimbursement of their expenses.
- D. To promote the improvement and expansion of general medical techniques, research and knowledge.
- E. To provide scholarships, fellowships and grants for worthy and qualified students, teachers and physicians in medicine, medical education and research.
- F. To promote the interchange of ideas, experience and research between students, teachers and physicians, of medicine, research and medical education and those engaged in solving and advancing the problems existing in medicine.
- G. To disseminate information and other data in the field of medicine, research and education to the end that the greatest possible number of people may be

informed and enlightened and have a better knowledge and understanding of medicine, medical education and training, medical diseases and the cures thereof.

- H. To conduct, sponsor, promote and support lectures, discussions, conferences and training programs with respect to problems of medicine, medical education, training and research and assist in the development of more intensive thought with respect to such problems.
- I. To cooperate with colleges, universities, medical institutions, foundations and other institutions of medical learning and medical research by financial support and other means.
- J. To receive funds and property by contributions, donations, bequests or device and otherwise, to aid in the foregoing purposes.
- K. To make contracts, purchase, invest and reinvest in, lease or otherwise acquire, hold, mortgage, sell or otherwise dispose of any real or personal property.
- L. To borrow money, contract debts and issue notes and secure the payment of the performance of its obligations and to do all other acts necessary or expedient for the administration of the affairs and in general shall have all such powers as are incidental to the attainment of the purposes of the Foundation.
- M. The Foundation, in furtherance of its purposes as set forth above, shall have all the powers enumerated in Section 202 of the Not-For-Profit Corporation Law, subject to any limitations provided in the Not-For-Profit Corporation Law or any other statute of the State of New York.

FOURTH: The Foundation shall not have the power to organize or operate any university, college, academy or other formal education institution. The Foundation shall not be conducted or operated for profit and no part of the net earnings of the Foundation shall inure to the benefit of any member or any individual nor shall any of such net earnings

or other property or assets of the Foundation be used otherwise than for charitable purposes. No substantial part of the activities of the Foundation shall consist of carrying on propaganda or otherwise influencing legislation.

FIFTH: If the Foundation shall be found to be a private Foundation pursuant to the provisions of Chapter 42 of the Internal Revenue Code of 1986;

- A. The Foundation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal Tax laws.
- B. The Foundation shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal Tax laws.
- C. The Foundation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal Tax laws.
- D. The Foundation shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal Tax laws.
- E. The Foundation shall contribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal Tax laws.

SIXTH: Nothing contained in this Certificate shall authorize the Foundation to establish, operate or maintain a hospital, a home care services 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, or to provide hospital services or health related services or to solicit any funds,

contributions or grants, from any source, for the establishment, operation or benefit of any hospital.

Nothing contained in this Certificate shall authorize the Foundation to establish, operate or maintain an adult care facility as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purpose.

- SEVENTH:** In the case of dissolution of the Corporation, the remaining assets and property of the Corporation after payment of necessary expenses shall be distributed to such organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or corresponding provision of any future United States Internal Revenue law), subject to an order of a Justice of the Supreme Court of the State of New York. No distribution of any property or assets of the Corporation shall be applied other than to accomplish charitable, scientific and/or educational purposes.
- EIGHTH:** The office of the Foundation shall be located in the County of Nassau, State of New York.
- NINTH:** The territory in which the operations of the Foundation are principally to be conducted is the United States of America, but its operations shall not be limited to such territory.
- TENTH:** The Secretary of State is hereby designated as agent of the Corporation upon whom process may be served. 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 upon him is:

Garfunkel, Wild & Travis, P.C.
111 Great Neck Road
Great Neck, New York 11021
Attention: George M. Garfunkel

- ELEVENTH:** Prior to delivery to the Department of State for filing all approvals or consents will be endorsed upon or annexed to this Certificate.

TWELFTH: Notwithstanding any other provision of these articles, the Foundation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, as specified in section 501(c)(3) of the Internal Revenue Code of 1986, and shall not carry on any 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.

IN WITNESS WHEREOF, this Certificate has been signed this 31st day of July, 2001, by the undersigned who affirm that the statements made herein are true under the penalties of perjury.


Robert H. Brown, M.D., President



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N. Y. 12237

PUBLIC HEALTH COUNCIL

October 2, 2001


Ms. Doris L. Martin
Garfunkel, Wild and Travis, P.C.
Attorneys at Law
111 Great Neck Road
Great Neck, New York 11021

Re: Amended and Restated Certificate of Incorporation of The M.E.E.T. Ophthalmology
Foundation, Inc.

Dear Ms. Martin:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 28th day of September, 2001, I hereby certify that the Public Health Council consents to the filing of the Amended and Restated Certificate of Incorporation of The M.E.E.T. Ophthalmology Foundation, Inc., dated July 31, 2001.

Sincerely,


Karen S. Westervelt
Executive Secretary

//

THE M.E.E.T OPHTHAMOLOGY FOUNDATION, INC.
RESTATED CERTIFICATE OF INCORPORATION
dated March 8, 2002

The Attorney General has no objection to the granting of Judicial approval hereon, acknowledges receipt of statutory notice and demands service of the filed certificate. Said no objection is conditioned on submission of the matter to the Court within 30 days hereafter.

ELIOT SPITZER
ATTORNEY GENERAL
STATE OF NEW YORK

By:



Ronald Turbin
Assistant Attorney General

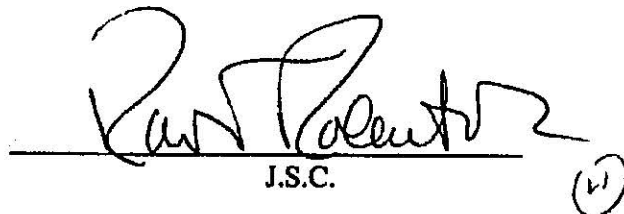
Date: March 8, 2002

Index # 004892/02

I, ROBERT ROBERTO JR., a Justice of the Supreme Court of the State of New York for the TENTH Judicial District do hereby approve of the foregoing Certificate of Amendment of the Certificate of Incorporation of THE M.E.E.T. OPHTHAMOLOGY FOUNDATION, INC.

and consent that the same be filed.

Date: MAR 27 2002



J.S.C. (1)

020411000304

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FILED

2002 APR 11 AM 10:44

CERTIFICATE OF RESTATED

OF

THE M.E.E.T. OPHTHALMOLOGY FOUNDATION, INC.

Under Section 805 of the Not-for-Profit Corporation Law

010-147
New N411

LCC
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED APR 11 2002
TAX \$ -
010-147
New-N411

Oct 11 2 11 PM '01

RECEIVED

FILED BY:

GARFUNKEL WILD & TRAVIS
111 Great Neck Rd.
Ste. 503
Great Neck, NY 11021-5405

Cust. Ref#880431AJC

Oct 10 4 06 PM '01

RECEIVED

13

020411000304

DiCocco, Vincent (HEALTH)

From: Stringfellow, Michael <mstringfellow@garfunkelwild.com>
Sent: Wednesday, January 18, 2023 2:53 PM
To: DiCocco, Vincent (HEALTH)
Subject: RE: Manhattan Eye Foundation ("Foundation")
Attachments: GW-Manhattan Eye Foundation, Inc.- Transmittal to NY Dept of Health re Consent..pdf; GW-Manhattan Eye Foundation, Inc.- Executed Board Consent re Amendment.pdf; GW-Manhattan Eye Foundation, Inc.- Bylaws.pdf; GW-Manhattan Eye Foundation, Inc.- PHHPC Response re Consent for Amendment..pdf

Follow Up Flag: Follow up
Flag Status: Flagged

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

Good afternoon Mr. DiCocco:

As per your instructions below, attached are the:

- A copy of the transmittal to the NY Dept. of Health ("DOH")
- A copy of the initial response from the DOH
- A copy of the executed board consent re name change
- A copy of the bylaws

Please be advised that the Foundation has requested to change their name to highlight the Foundation's stated goals of supporting not only the treatment of eye disorders, but ear and ophthalmological issues.

Let me know if you need anything else.

Thanks.

Mike

Michael Stringfellow, Paralegal
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021
t: 516.393.2578 | f: 516.466.5964



From: DiCocco, Vincent (HEALTH) <Vincent.DiCocco@health.ny.gov>
Sent: Friday, January 13, 2023 2:06 PM

To: Stringfellow, Michael <mstringfellow@garfunkelwild.com>

Subject: Re: Manhattan Eye Foundation

*** External email ***

Good afternoon Mr. Stringfellow,

We talked in the middle of last year regarding the changes to the Certificate of Incorporation, we in the process of the review and I need to further request the following information:

- 1- A copy of the request letter sent to PHHPC dated June 21, 2022.
 - a. If the request letter does not detail it, a brief explanation explaining the nature and reasons for the requested change.
- 2- A copy of the bylaws of the Manhattan Eye Foundation
- 3- A copy of the Written Consent of the Board of Directors consenting to the name change.

I apologize in advance for the length of this process, the department has undergone some significant restructuring, however, we hope to have this on the April PHHPC Agenda.

Best regards,

Vincent DiCocco

Senior Attorney

Bureau of Program Counsel

New York State Department of Health - Division of Legal Affairs

Room 2480, Corning Tower

Empire State Plaza

Albany, NY 12237

(518) 391-4565

Pronouns: He/Him/His

Vincent.DiCocco@health.ny.gov

NOTICE: The contents of this email are confidential and protected by attorney-client privilege, as attorney work-product, or by other privileges or provisions of law.



Disclaimer

NOTICE: This e-mail and the attachments hereto, if any, may contain legally privileged and/or confidential information. It is intended only for use by the named addressee(s). If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and the attachments hereto, if any, is strictly prohibited. If you have received this transmission in error, please immediately notify the sender by telephone and permanently delete this e-mail and the attachments hereto, if any, and destroy any printout thereof.

CSC 45

RESTATED CERTIFICATE OF INCORPORATION
OF

THE M.E.E.T. OPHTHALMOLOGY FOUNDATION, INC.

(Under Section 805 of the Not-for-Profit
Corporation Law of the State of New York)

The undersigned, being the President of THE M.E.E.T. OPHTHALMOLOGY FOUNDATION, INC., a New York State not-for-profit corporation (the "Corporation"), does hereby certify and set forth:

- FIRST: The name of the Corporation is THE M.E.E.T. OPHTHALMOLOGY FOUNDATION, INC.
- SECOND: The Certificate of Incorporation of the Corporation was filed by the New York Secretary of State on June 30, 1977 pursuant to the Not-for-Profit Corporation Law of the State of New York under the name The M.E.E.T. Ophthalmology Foundation, Inc. A Certificate of Amendment of the Certificate of Incorporation of the Corporation was filed by the New York Secretary of State on November 29, 1978 pursuant to the Not-for-Profit Corporation Law of the State of New York under the name The M.E.E.T. Ophthalmology Foundation, Inc.
- THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York and is a Type B corporation under Section 201 of said law and the Corporation shall remain a Type B corporation after this amendment is effectuated.
- FOURTH:
 - (a) The Corporation's Certificate of Incorporation is hereby amended by the deletion of Article First and the addition of the following new Article First:
 - FIRST: The name of the corporation (hereinafter called the "Foundation") is MANHATTAN EYE FOUNDATION, INC.
 - (b) The Corporation's Certificate of Incorporation is hereby amended by the deletion of Sections A and B of Article Third and the addition of the following new Section A:
 - A. To support and encourage programs conducting, coordinating and sponsoring teaching and training programs

of resident and intern staffs and to improve patient care and in particular treatment and care of the eye and to improve mankind.

- (c) Existing Sections C through N of Article Third shall be re-lettered as Sections B through M, respectively.
- (d) The Corporation's Certificate of Incorporation is hereby amended by the deletion of Article SIXTH and the addition of the following new Article SIXTH:

SIXTH: Nothing contained in this Certificate shall authorize the Foundation to establish, operate or maintain a hospital, a home care services 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, or to provide hospital services or health related services or to solicit any funds, contributions or grants, from any source, for the establishment, operation or benefit of any hospital.

Nothing contained in this Certificate shall authorize the Foundation to establish, operate or maintain an adult care facility as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purpose.

- (e) The Corporation's Certificate of Incorporation is hereby amended by the deletion of Article SEVENTH and the addition of the following new Article SEVENTH:

SEVENTH: In the case of dissolution of the Corporation, the remaining assets and property of the Corporation after payment of necessary expenses shall be distributed to such organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or corresponding provision of any future United States Internal Revenue law), subject to an order of a Justice of the Supreme Court of the State of New York. No

distribution of any property or assets of the Corporation shall be applied other than to accomplish charitable, scientific and/or educational purposes.

- (f) The Corporation's Certificate of Incorporation is hereby amended by the deletion of Article EIGHTH and the addition of the following new Article EIGHTH:

EIGHTH: The office of the Foundation shall be located in the County of Nassau, State of New York.

- (g) The Corporation's Certificate of Incorporation is hereby amended by the deletion of Article TENTH and the addition of the following new Article TENTH:

TENTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process may be served. 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 upon him is:

Garfunkel, Wild & Travis, P.C.
111 Great Neck Road
Great Neck, New York 11021
Attention: George M. Garfunkel

FIFTH: This amendment was authorized by the unanimous written consent of the Board of Directors.

SIXTH: The text of the Certificate of Incorporation is hereby restated as amended in full:

**Restated Certificate
of Incorporation
of
MANHATTAN EYE FOUNDATION, INC.**

FIRST: The name of the proposed corporation (hereinafter called the "Foundation") is: MANHATTAN EYE FOUNDATION, INC.



SECOND: The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law and is a Type B corporation as defined in Section 201(b) (Purposes) of said law.

THIRD: The purposes for which the Foundation is formed are as follows:

- A. To support and encourage programs conducting, coordinating and sponsoring teaching and training programs of resident and intern staffs and to improve patient care and in particular treatment and care of the eye and to improve mankind.
- B. To encourage, promote, coordinate and sponsor medical research, by grants, contributions, or otherwise, all to the improvement of mankind's knowledge of medicine, diseases and cures thereof, and to this end to cooperate with hospitals, hospital organizations, universities, colleges, individuals, corporations, associations, governmental bodies or other agencies.
- C. To support students, interns, residents or physicians engaged in obtaining medical education or in conducting research, by grants, or by reimbursement of their expenses.
- D. To promote the improvement and expansion of general medical techniques, research and knowledge.
- E. To provide scholarships, fellowships and grants for worthy and qualified students, teachers and physicians in medicine, medical education and research.
- F. To promote the interchange of ideas, experience and research between students, teachers and physicians, of medicine, research and medical education and those engaged in solving and advancing the problems existing in medicine.
- G. To disseminate information and other data in the field of medicine, research and education to the end that the greatest possible number of people may be

informed and enlightened and have a better knowledge and understanding of medicine, medical education and training, medical diseases and the cures thereof.

- H. To conduct, sponsor, promote and support lectures, discussions, conferences and training programs with respect to problems of medicine, medical education, training and research and assist in the development of more intensive thought with respect to such problems.
- I. To cooperate with colleges, universities, medical institutions, foundations and other institutions of medical learning and medical research by financial support and other means.
- J. To receive funds and property by contributions, donations, bequests or device and otherwise, to aid in the foregoing purposes.
- K. To make contracts, purchase, invest and reinvest in, lease or otherwise acquire, hold, mortgage, sell or otherwise dispose of any real or personal property.
- L. To borrow money, contract debts and issue notes and secure the payment of the performance of its obligations and to do all other acts necessary or expedient for the administration of the affairs and in general shall have all such powers as are incidental to the attainment of the purposes of the Foundation.
- M. The Foundation, in furtherance of its purposes as set forth above, shall have all the powers enumerated in Section 202 of the Not-For-Profit Corporation Law, subject to any limitations provided in the Not-For-Profit Corporation Law or any other statute of the State of New York.

FOURTH: The Foundation shall not have the power to organize or operate any university, college, academy or other formal education institution. The Foundation shall not be conducted or operated for profit and no part of the net earnings of the Foundation shall inure to the benefit of any member or any individual nor shall any of such net earnings

or other property or assets of the Foundation be used otherwise than for charitable purposes. No substantial part of the activities of the Foundation shall consist of carrying on propaganda or otherwise influencing legislation.

FIFTH: If the Foundation shall be found to be a private Foundation pursuant to the provisions of Chapter 42 of the Internal Revenue Code of 1986;

- A. The Foundation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal Tax laws.
- B. The Foundation shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal Tax laws.
- C. The Foundation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal Tax laws.
- D. The Foundation shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal Tax laws.
- E. The Foundation shall contribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal Tax laws.

SIXTH: Nothing contained in this Certificate shall authorize the Foundation to establish, operate or maintain a hospital, a home care services 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, or to provide hospital services or health related services or to solicit any funds,

contributions or grants, from any source, for the establishment, operation or benefit of any hospital.

Nothing contained in this Certificate shall authorize the Foundation to establish, operate or maintain an adult care facility as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purpose.

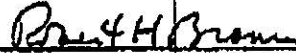
- SEVENTH:** In the case of dissolution of the Corporation, the remaining assets and property of the Corporation after payment of necessary expenses shall be distributed to such organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or corresponding provision of any future United States Internal Revenue law), subject to an order of a Justice of the Supreme Court of the State of New York. No distribution of any property or assets of the Corporation shall be applied other than to accomplish charitable, scientific and/or educational purposes.
- EIGHTH:** The office of the Foundation shall be located in the County of Nassau, State of New York.
- NINTH:** The territory in which the operations of the Foundation are principally to be conducted is the United States of America, but its operations shall not be limited to such territory.
- TENTH:** The Secretary of State is hereby designated as agent of the Corporation upon whom process may be served. 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 upon him is:

Garfunkel, Wild & Travis, P.C.
111 Great Neck Road
Great Neck, New York 11021
Attention: George M. Garfunkel

- ELEVENTH:** Prior to delivery to the Department of State for filing all approvals or consents will be endorsed upon or annexed to this Certificate.

TWELFTH: Notwithstanding any other provision of these articles, the Foundation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, as specified in section 501(c)(3) of the Internal Revenue Code of 1986, and shall not carry on any 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.

IN WITNESS WHEREOF, this Certificate has been signed this 31st day of July, 2001, by the undersigned who affirm that the statements made herein are true under the penalties of perjury.


Robert H. Brown, M.D., President

BYLAWS OF MANHATTAN EYE FOUNDATION, INC.

ARTICLE I

PURPOSE AND POWERS

1.1. PURPOSE

The Corporation shall have such purposes as are now or may hereafter be set forth in the Certificate of Incorporation.

1.2. POWERS

The Corporation shall have such powers as are now or may be hereafter be granted by the Not-For-Profit Corporation Law of the State of New York.

ARTICLE II

BOARD OF DIRECTORS

2.1. GENERAL POWERS

The Board of Directors shall have and execute all powers over all the business, concerns and affairs of the Corporation, generally, without limitation.

2.2. ANNUAL MEETING

An annual meeting of the Board of Directors shall be held at such time and place as shall be designated by the Board for the purpose of electing the Board and Officers, reviewing financial reports and for the transaction of such other business as may come before the meeting.

2.3. SPECIAL MEETINGS

Special meetings of the Board of Directors may be called by a majority of the Directors then in office, or at the direction of the President. Such special meetings are to be held at such time and place, either within or without the State of New York, as shall be designated in the notice of the meeting.

2.4. NOTICE

Notice of the time and place of any meeting of the Board of Directors shall be given at least one day previously thereto by written notice delivered personally or sent by mail, e-mail, or fax to each director at his address as shown by the records of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice is given by e-mail or fax, such notice shall be deemed to be delivered when the e-mail or fax is sent. Any Director may waive notice of any meeting. Waiver of notice may be in

writing, either manually or by e-mail or facsimile signature. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of the Board need be specified in the notice or waiver of notice of such meeting.

2.5. NUMBER, ELECTION AND TENURE

The number of directors constituting the entire Board shall not be less than three, nor more than twelve as determined by the Board. The term of office of directors shall be three years. Each director shall hold office until the expiration of the term for which he is elected or appointed, and until his successor has been elected or appointed and qualified. A director may be reappointed for additional terms.

2.6. QUORUM

A majority of the Directors present shall constitute a quorum for the transaction of business at any meeting of the Board, except if less than such number of Directors are present at such meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

2.7. ACTION BY BOARD

- (a) Formal Action by 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.
- (b) Informal Action by Directors. No action of the Board of Directors shall be valid unless taken at a meeting at which a quorum is present, except that any action which may be taken at a meeting of the Board may be taken without a meeting, if a consent in writing or by facsimile signature or e-mail (setting forth the action so taken) shall be signed by each director entitled to vote.

2.8. RESIGNATIONS AND REMOVAL

Any Director may resign from the Board at any time by giving written notice to the President of the Corporation and receiving written acceptance of such resignation.

2.9. VACANCIES

Any vacancy occurring in the Board of Directors and any directorship to be filled shall be filled by the remaining Directors.

2.10. COMPENSATION

Directors shall not receive any stated salary for their services, nor be allowed expenses for attending each annual or special meeting. Nothing herein contained shall be

construed to preclude any Director from serving the Corporation in any other type of capacity and receiving compensation therefor.

2.11. CONFERENCE TELEPHONE CALLS

Members of the Board of Directors may participate in a meeting by means of a conference telephone or electronic video screen if all persons participating in the meeting can hear each other at the same time and each director can participate in all matters before the Board of Directors, including, without limitation, the ability to propose, object to and vote upon a specific action to be taken.

ARTICLE III

OFFICERS

3.1. CATEGORIES

The officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary and a Treasurer.

3.2. ELECTION AND TERM OF OFFICE

The officers of the Corporation shall be elected annually by the Board of Directors at its annual meeting. Each officer shall hold office for a term of one (1) year and until his successor shall have been elected unless he shall sooner resign or be removed.

3.3. REMOVAL AND RESIGNATIONS

Any officer elected by the Board may be removed by the Board whenever in its judgment the best interest of the Corporation would be served thereby. Any officer may resign at any time by giving written notice to the President of the Corporation and receiving written acceptance of such resignation.

3.4. VACANCIES

A vacancy in any office may be filled by the Board of Directors for the unexpired portion of the term.

3.5. PRESIDENT

The President shall be elected from among the Directors of the Corporation and shall be chairman of and preside at all meetings of the Board of Directors and of the Executive Committee. Effective January 1, 2015, the President shall not be an employee of the Corporation. The President shall be the Chief Executive Officer of the Corporation and have general overall supervision of all the affairs of the Corporation.

3.6. VICE PRESIDENTS

One or more Vice Presidents may be elected from among the Directors and, in the absence of the President, the Vice Presidents (in the order of their election) shall perform the duties of the President.

3.7. SECRETARY

The Secretary shall keep the minutes of the meetings of the Board of Directors and Executive Committee in one or more books provided for that purpose; assure that minutes of all meetings of other committees are prepared and filed with the records of the Corporation; insure that all notices are given in accordance with the provisions of these bylaws or as required by law; keep a study of the corporate records and of the seals of the Corporation; assure that the seal of the Corporation be affixed to all documents upon which its required; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the President or the Board of Directors.

3.8. TREASURER

The Treasurer shall, subject to the direction of the President, have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipt for monies due and payable to the Corporation from any source whatsoever; deposit all such monies in the name of the Corporation in such banks, trust companies or other depositories as shall be selected; and in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the President or by the Board of Directors.

ARTICLE IV

COMMITTEES

4.1. OPERATING COMMITTEES OF THE BOARD OF DIRECTORS.

Operating committees of the Board may be designated by the President, except to the extent that this authority of the President may be specifically limited by a resolution of the Board, subject to approval of a majority of the entire Board. Each operating Committee of the Board shall consist of members of the Board of Directors and shall have all the authority of the Board of Directors which lawfully may be delegated to such a committee. Operating committees of the Board may include but are not limited to a Funding Committee and a Finance Committee.

4.2. COMMITTEES OF THE CORPORATION. The Board of Directors may designate committees of the Corporation, each of which may be comprised of members and non-members of the Board of Directors. The Board of Directors shall appoint the members of the committees of the Corporation from among the directors, officers, employees, members, professional advisors and friends of the Corporation and shall designate a

Chairman, a Vice Chairman and a Secretary for each committee. Committees of the Corporation shall not have the power to bind the Board of Directors.

4.3. EX OFFICIO MEMBERS

The President shall be an Ex Officio member of all operating committees of the Board and committees of the Corporation. He shall be entitled to all rights and privileges of regular committee members but shall not vote or be counted in determining the existence of a quorum.

4.4. TENURE

Each member of an operating committee of the Board and a committee of the Corporation shall continue as such until the next annual meeting of the Board of Directors and until his successor is appointed, unless sooner removed. Each member may be reappointed for additional one (1) year periods.

4.5. QUORUM

~~A majority of each operating committee of the Board and committee of the Corporation shall constitute a quorum for the transaction of business of such committee.~~

4.6. ACTION BY COMMITTEES

- (a) Formal Action. The act of a majority of the members of a committee of the Board and a committee of the Corporation at which a quorum is present shall be the act of such committee.
- (b) Informal Action. No action of a committee of the Board or a committee of the Corporation shall be valid unless taken at a meeting at which a quorum is present, except that any action which may be taken at a meeting may be taken without a meeting if a consent (setting forth the action so taken) shall be signed by each member of the committee entitled to vote, either manually or by e-mail or facsimile signature.

4.7. RESIGNATIONS AND REMOVAL

Any member of an operating committee of the Board or a committee of the Corporation may resign from such committee at any time by giving written notice to the Chairman of such committee and receiving written acceptance of such resignation from the Chairman. Any member of an operating committee of the Board or a committee of the Corporation may be removed by the President whenever in his judgment the best interest of the Corporation shall be served by such removal.

4.8. VACANCIES

Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

4.9. MINUTES

The Secretary of each committee shall prepare minutes of each meeting and forward copies thereof to the Executive Director and President of the Corporation.

ARTICLE V

ADMINISTRATION

5.1. CONTRACTS

The Board of Directors may authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or specific.

5.2. NEGOTIABLE DOCUMENTS

All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by the Board of Directors. Such instruments shall be signed by the Treasurer and countersigned by the President.

5.3. BANKING INSTITUTIONS

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

5.4. GIFTS

The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequests or devise for a general or specific purpose.

ARTICLE VI

AMENDMENT TO BYLAWS

These bylaws may be altered, amended or repealed and new bylaws may be adopted by the act of a majority of the Directors present in person (or participating by means of a conference telephone or electronic video screen) at a meeting at which a quorum is present or by a consent in writing by each director entitled to vote, signed either manually or by e-mail or facsimile signature.

ARTICLE VII

MISCELLANEOUS

7.1. BOOKS AND RECORDS

The Corporation shall keep correct and complete books and records of account and the minutes of the proceedings of the Board of Directors. Copies of the minutes of the Board of Directors shall be regularly distributed to each member of the Board of Directors.

7.2. FISCAL YEAR

The fiscal year of the Corporation shall begin on the first day of July and end on the last day of June in each year.

7.3. CORPORATE SEAL

The official seal of the Corporation shall have inscribed thereon the name of the Corporation and the year of its incorporation and shall be in such form and contain such necessary words as the Board of Directors shall determine.

7.4. WAIVER OF NOTICE

Whenever any notice is required to be given, a waiver thereof in writing signed, either manually or by e-mail or facsimile signature by the persons entitled to such notice whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

7.5. RULES AND REGULATIONS

The Board of Directors may adopt, amend or repeal rules and regulations for the management of the internal affairs of the Corporation and the governing of its officers, agents, committees and employees.

ARTICLE VIII

INDEMNIFICATION AND INSURANCE

8.1. INDEMNIFICATION.

- (a) The Corporation shall indemnify any person made, or threatened to be made, a party to an action or proceeding, other than one by or in the right of the Corporation to procure a judgment in its favor, whether civil or criminal, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein, if such director or officer acted in good faith, for a purpose which he reasonably believed to be in the best interests of the

Corporation and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful.

- (b) The termination of any such civil or criminal action or proceeding by judgment, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such director or officer did not act in good faith, for a purpose which he reasonably believed to be in the best interests of the Corporation or that he had reasonable cause to believe that his conduct was unlawful.
- (c) The Corporation shall indemnify any person made, or threatened to be made, a party to an action by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director or officer of the Corporation against amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, if such director or officer acted in good faith for a purpose which he reasonably believed to be in the best interests of the Corporation, except that no indemnification under this paragraph shall be made in respect of (1) a threatened action, or a pending action which is settled or otherwise disposed of, or (2) any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation, unless and only to the extent that the court in which the action was brought, or, if no action was brought, any court of competent jurisdiction, determines upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such portion of the settlement amount and expenses as the court deems proper.

8.2. OTHER INDEMNIFICATION

The Corporation may, to the fullest extent permitted by the New York Not-for-Profit Corporation Law, indemnify or advance the expenses of any other person including agents and employees to whom the Corporation is permitted by law to provide indemnification or advancement of expenses.

8.3. PAYMENT OF EXPENSES IN ADVANCE

To the fullest extent permitted by the New York Not-For-Profit Corporation Law, the Corporation will advance to any person who may be entitled to indemnification under Sections 1 or 2 of this Article sums with which to pay expenses incurred by that person in defending against the claims, actions or proceedings for which such person may become entitled to indemnification, upon receipt of an undertaking by or on behalf of such person to repay the sums which are advanced if it is ultimately determined that such person is not entitled to indemnification under Sections 1 or 2 of this Article or to the extent the sums which are advanced exceed the indemnification to which such person is entitled.

8.4. ENFORCEMENT AND DEFENSE

The right to indemnification or advancement of expenses granted by this Article shall be enforceable by any person so entitled in any court of competent jurisdiction if the Corporation denies such request, in whole or in part, or if no disposition thereof is made within 60 days. Such person's expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for the advancement of expenses under Section 3 of this Article where the required undertaking has been received by the Corporation) that the claimant has conducted himself in a manner which would preclude the Corporation from indemnifying him pursuant to sections 1 or 2 of this Article, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors and its independent legal counsel) to have made a determination that indemnification of the claimant is proper in the circumstances, nor the fact that there has been an actual determination by the Corporation (including its Board of Directors and its independent legal counsel) that indemnification of the claimant is not proper in the circumstances, shall be a defense to the action or create a presumption that the claimant is not entitled to indemnification.

8.5. SURVIVAL, SAVINGS CLAUSE AND PRESERVATION OF OTHER RIGHTS

- (a) The foregoing indemnification provisions shall be deemed to be a contract between the Corporation and each person who serves in the capacity of director or officer of the Corporation at any time while these provisions are in effect, and any repeal or modification of the New York Not-For-Profit Corporation Law shall not affect any right or obligation then existing with respect to any state of facts then or previously existing or any action or proceeding previously or thereafter brought or threatened based in whole or in part upon any such state of facts, except as provided by law. Such a contract right may not be modified retroactively without the consent of such person, except as provided by law.
- (b) If this Article or any portion hereof shall be invalidated on any ground by any court of competence jurisdiction, then the Corporation shall nevertheless indemnify each person of the Corporation against judgments, fines, amounts paid in settlement and expenses (including attorneys, fees) incurred in connection with any actual or threatened action or proceeding, whether civil or criminal, including any actual or threatened action by or in the right of the Corporation, or any appeal therein, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.
- (c) The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any other by-law, agreement, vote of directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person. The Corporation is hereby authorized to provide further indemnification if it deems

advisable by resolution of the directors, by amendment of these by-laws or by agreement.

8.6. INSURANCE

The Corporation may purchase and maintain insurance to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors and officers and to indemnify officers, directors and others against costs or liabilities incurred by them in connection with the performance of their duties and any activities undertaken by them for, or at the request of, the Corporation, to the fullest extent permitted by the New York Not-for-Profit Corporation Law.

8.7. NEW YORK NOT-FOR-PROFIT CORPORATION LAW

All references to the New York Not-For-Profit Corporation Law in this Article shall mean such Law as it may from time to time be amended.

ARTICLE IX

CONFLICTS OF INTEREST POLICY

The Corporation has adopted a Conflicts of Interest and Related Party Transactions Policy in accordance with the New York Not-For-Profit Corporation Law. The Corporation shall review and amend such policy from time to time as appropriate.

**UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS
OF
MANHATTAN EYE FOUNDATION, INC.**

The undersigned, being all of the members of the Board of Directors (the "Board") of MANHATTAN EYE FOUNDATION, Inc., a New York not-for-profit corporation (the "Corporation"), do hereby consent, pursuant to Section 802(a)(2) of the Not-for-Profit Corporation Law of the State of New York and Section 2.7(b) of the Bylaws of the Corporation to the adoption of the following resolutions and the taking of the following actions in lieu of a meeting, with the same force and effect as if they had been approved and adopted at a duly commissioned meeting of the Board:

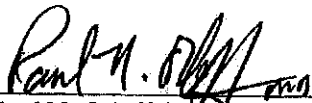
WHEREAS, the Board desires to amend the certificate of incorporation of the Corporation to change the name of the Corporation, expand the disclaimers for specific authorizations and update the address to which service of process may be mailed, a copy of the proposed amendment is annexed hereto as Schedule A (the "Amendment");

NOW, THEREFORE, it is hereby:

RESOLVED, that the Amendment, a copy of which is annexed hereto, is hereby approved in all respects; and be it further

FURTHER RESOLVED, that each of the officers of the Corporation is hereby authorized and empowered to execute such documents and to take such steps as such officer may determine to be necessary, appropriate or advisable to carry out the intent and purposes of the foregoing resolutions, such determination to be conclusively evidenced by the execution and delivery of such documents and the taking of such steps. This consent may be executed in counterparts, which when taken together shall constitute one and the same document.

[SIGNATURE PAGE FOLLOWS]


Paul N. Orloff, M.D.

Melvin Rothberger, M.D.

Kenneth Wald, M.D.

Peter Berglas, M.D.

David Haight, M.D.

Gary Hirshfield, M.D.

Richard Gibraltar, M.D.

Peter L. Menger, M.D.

Jack Dodick, M.D.

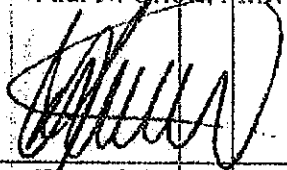
Richard Lisman, M.D.

Vincent Giovinazzo, M.D.

Aspasia Draga, M.D.

[Signature page to Manhattan Eye Foundation, Inc. Unanimous Written Consent]

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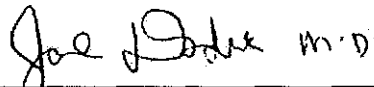
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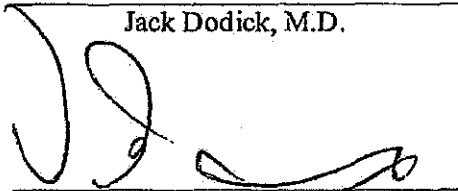
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Richard Lisman, M.D.



Vincent Giovinazzo, M.D.

Aspasia Draga, M.D.

**UNANIMOUS WRITTEN CONSENT OF THE BOARD OF
DIRECTORS
OF
MANHATTAN EYE FOUNDATION, INC.**

The undersigned, being all of the members of the Board of Directors (the "Board") of MANHATTAN EYE FOUNDATION, Inc., a New York not-for-profit corporation (the "Corporation"), do hereby consent, pursuant to Section 802(a) (2) of the Not-for-Profit Corporation Law of the State of New York and Section 2.7(b) of the Bylaws of the Corporation to the adoption of the following resolutions and the taking of the following actions in lieu of a meeting, with the same force and effect as if they had been approved and adopted at a duly commissioned meeting of the Board:

WHEREAS, the Board desires to amend the certificate of incorporation of the Corporation to change the name of the Corporation and update the address to which service of process may be mailed, a copy of the proposed amendment is annexed hereto as Schedule A (the "Amendment");

NOW, THEREFORE, it is hereby:

RESOLVED, that the Amendment, a copy of which is annexed hereto, is hereby approved in all respects; and be it further

FURTHER RESOLVED, that each of the officers of the Corporation is hereby authorized and empowered to execute such documents and to take such steps as such officer may determine to be necessary, appropriate or advisable to carry out the intent and purposes of the foregoing resolutions, such determination to be conclusively evidenced by the execution and delivery of such documents and the taking of such steps. This consent may be executed in counterparts, which when taken together shall constitute one and the same document.

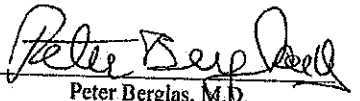
[SIGNATURE PAGE FOLLOWS]

[Signature page to Manhattan Eye Foundation, Inc. Unanimous Written Consent]

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SCHEDULE A

[Certificate of Amendment]

[Signature page to Manhattan Eye Foundation, Inc. Unanimous Written Consent]

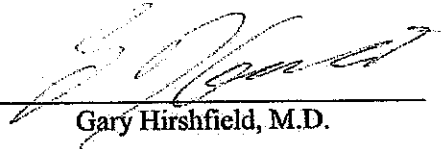
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Aspasia Draga, M.D.

[Signature page to Manhattan Eye Foundation, Inc. Unanimous Written Consent]

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
MANHATTAN EYE FOUNDATION, INC.**

Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the president of the Board of Directors of Manhattan Eye Foundation, Inc., hereby certifies:

1. The name of the corporation is MANHATTAN EYE FOUNDATION, INC. (the "Corporation"). The name under which the Corporation was formed was "M.E.E.T. Ophthalmology Foundation, Inc."

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on June 30, 1977 pursuant to the Not-for-Profit Corporation Law of the State of New York (the "NPCL"). A Certificate of Amendment of the Certificate of Incorporation was filed on November 29, 1978 and a Restated Certificate of Incorporation of the Corporation was filed on April 11, 2008.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

4. The Certificate of Incorporation is hereby amended to effect the following change as authorized under subparagraph (b)(1) of Section 801 of the NPCL: Paragraph FIRST of the Certificate of Incorporation, which provides the name of the Corporation as Manhattan Eye Foundation, Inc. is hereby deleted in its entirety and replaced as follows:

“FIRST: The name of the Corporation is Manhattan Eye and Ear Ophthalmology Alumni Foundation, Inc.”

5. The Corporation’s Certificate of Incorporation is hereby further amended by the deletion of Article SIXTH in its entirety and replaced as follows:

“SIXTH: (a) Nothing contained in this Certificate shall authorize the Corporation to establish, operate or maintain a hospital, a home care services 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, or to provide hospital services or health related services or to solicit any funds, contributions or grants, from any source, for the establishment, operation or benefit of any hospital.

(b) Nothing contained in this Certificate shall authorize the Corporation to establish, operate or maintain an adult care facility as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purpose.

(c) Nothing herein shall authorize the Corporation to operate, maintain or manage a charter school, a nursery school, a kindergarten, an elementary school, a secondary school, a college, university or to advertise or offer credit-bearing courses or degrees in New York State.

(d) Except as authorized by Title VIII of the Education Law or other applicable statute, nothing herein shall authorize the Corporation to engage in the practice of any profession in New York, engage in the training of any profession in New York or to use a professional title or term of any profession in violation of Title VIII.

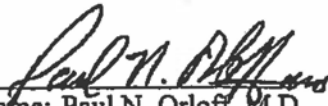
5. The Certificate of Incorporation is further amended to effect the following change as authorized under subparagraph (b)(7) of Section 801 of the NPCL: Paragraph TENTH of the Certificate of Incorporation, which provides the address to which the Secretary of State shall mail a copy of any process served, is hereby deleted in its entirety and replaced as follows:

“TENTH: The Secretary of State is hereby designated as the agent of the Corporation upon whom process may be served. 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 upon him or her is:

c/o The Corporation
Garfunkel Wild, P.C.
111 Great Neck Road, 6th Floor
Great Neck, NY 11021-5406
Attn: Doris L. Martin, Esq.”

6. This Amendment of the Certificate of Incorporation of the Corporation was authorized by unanimous written consent of the vote of the Board of Directors.

Dated: January 27, 2022


Name: Paul N. Orlofi, M.D.
Title: President

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
MANHATTAN EYE FOUNDATION, INC.**

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

**FILED BY:
MICHAEL STRINGFELLOW, LEGAL ASSISTANT
GARFUNKEL WILD, P.C.
ATTORNEYS AT LAW
111 GREAT NECK ROAD
GREAT NECK, NEW YORK 11021**

MEMORANDUM

To: Kathy Marks
General Counsel
Division of Legal Affairs

From: Jason Riegert, Deputy Director
Bureau of Program Counsel

Date: May 5, 2023

Subject: Proposed Dissolution of New York Congregational Nursing Center

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: Michael Stelluti
Division of Health Facility Planning and Development

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

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

Date: May 5, 2023

Subject: Proposed Dissolution of New York Congregational Nursing Center

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 November 21, 2022, electronic letter to the PHHPC requesting dissolution from Connor Blancato, Consultant to New York Congregational Nursing Center;
- 3) A draft Verified Petition, to be signed by Thomas Bettridge, Director of New York Congregational Nursing Center after the Department of Health and PHHPC approval seeking the State Attorney General's approval for the filing of the Applicant's Certificate of Dissolution;
- 4) A proposed Plan of Dissolution of New York Congregational Nursing Center;
- 5) The Certificate of Incorporation and subsequent amendments of New York Congregational Nursing Center;
- 6) The Amended and Restated Bylaws of The New York Congregational Nursing Center;
- 7) The December 29, 2021, Resolutions of the Member of New York Congregational Nursing Center, to approve the dissolution; and
- 8) The December 29, 2021, Resolutions of the Board of Directors of New York Congregational Nursing Center, to approve the dissolution.

Attachments.

cc: J. Corvino

[Type here]

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *KSM*

Date: May 5, 2023

Subject: Proposed Dissolution of New York Congregational Nursing Center

New York Congregational Nursing Center ('The Corporation') requests Public Health and Health Planning Council ('PHHPC') approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law ('NPCL') § 1002(c) and § 1003, as well as 10 NYCRR Part 650.

The Corporation is a New York not-for-profit corporation incorporated on May 6, 1991, with the stated purpose to become the licensed operator of a Residential Health Care Facility located at 10 Acre Place, Binghamton, NY 13904. On December 31, 2020, the Corporation sold substantially all of its assets, at which time skilled nursing operations conducted under the Corporation ceased. Because the Corporation has concluded operations and gone dormant, its Board of Directors believe it is in the best interests of the Corporation to dissolve.

On December 29, 2021, both the sole member (New York Congregational Community Services) and the Board of Directors of the Corporation approved and authorized dissolution and authorized the filing of the Certificate of Dissolution on February 26, 2022.

The Corporation has no assets or liabilities.

Attached is a request electronic letter from Connor Blancato on behalf of the Corporation, a proposed Verified Petition to the Attorney General, a Plan of Dissolution, a proposed Certificate of Dissolution, the Corporation's Certificate of Incorporation with current amendment, Bylaws and Resolutions of the member as well as the Board of Directors authorizing the dissolution.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and the Certificate of Dissolution, and it is in legally acceptable form.

Attachments

Leonard, Colleen M (HEALTH)

From: Connor Blancato <CBlancato@hseny.com>
Sent: Monday, November 21, 2022 12:55 PM
To: Leonard, Colleen M (HEALTH)
Cc: Erin Durkin
Subject: New York Congregational Nursing Center - PHHPC Consent to Dissolve
Attachments: B4 - NYCNC - Certificate of Dissolution- executed.pdf; NYCNC - Petition to AG to Dissolve v3.docx

You don't often get email from cblancato@hseny.com. [Learn why this is important](#)

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

Good Afternoon Colleen,

We are representing the New York Congregational Nursing Center (NYCNC) in a petition to the Attorney General's office for an Approval of the Certificate of Dissolution. In relation to the petition to dissolve, we would like to request a consent to the dissolution from the Public Health and Health Planning Council. PHHPC previously approved the sale of the NYCNC's assets, and now that NYCNC has no assets, this is the last step to winding up the entity.

Attached, please find for your review,

- A draft of the Petition to Dissolve.
- An executed Certificate of Dissolution.

Please let us know if you have any more questions or comments.

Thank you very much,

Connor Blancato

**HIRSCHEN SINGER
& EPSTEIN LLP**

Connor Blancato
Associate*

Hirschen Singer & Epstein LLP
902 Broadway, 13th Floor
New York, New York 10010
Direct: [\(646\)-887-2950](tel:(646)887-2950)
Fax: [\(212\) 302-8536](tel:(212)302-8536)

*Not Yet Admitted



This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and all attachments and notify us immediately.

_____ X
 In the Matter of the Application of, :
 :
 NEW YORK CONGREGATIONAL :
 NURSING CENTER :
 :
 :
 for Approval of Certificate of Dissolution :
 pursuant to Section 1002 of the Not-for-Profit :
 Corporation Law :
 _____ X

VERIFIED PETITION

NEW YORK STATE ATTORNEY GENERAL
 Charities Bureau - Trusts & Estates Section
 120 Broadway, 3rd Floor
 New York, NY 10271-0332

NEW YORK CONGREGATIONAL NURSING CENTER, having its principal office at 151 Maple Street, Brooklyn, New York 11225 (“Petitioner”), by its attorneys, Hirschen Singer & Epstein LLP, respectfully shows:

1. Petitioner is a corporation formed pursuant to the Not-for-Profit Corporation Law of the State of New York (the “N-PCL”). A copy of Petitioner’s certificate of incorporation, which was filed on January 25, 1994 and all amendments thereto and a copy of Petitioner’s bylaws are attached hereto as **Exhibit A**.

2. The names, titles and addresses of Petitioner’s directors and officers are:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Kendall Christiansen	Chairperson	151 Maple Street, Brooklyn, New York 11225
Michael Robinson	Secretary/Treasurer	151 Maple Street, Brooklyn, New York 11225

Dr. Esther Siegel	Vice Chairperson	151 Maple Street, Brooklyn, New York 11225
Dr. Margaret L. McClure	Director	151 Maple Street, Brooklyn, New York 11225
Michael Sharp	Director	142 Union Steet, Brooklyn, New York 11231
Thomas Bettridge	Director	315 St. Johns Place, Apt 5E, Brooklyn, New York 11238

3. The purpose of the Corporation is to provide, on a non-profit basis, nursing home facilities and services for the accommodation of convalescents or others who are not acutely ill and not in need of hospital care, where no adequate housing exists for such groups, and to these ends to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain, and operate a nursing facility and non-occupant services program pursuant to the terms of the Public Health Law.

4. Petitioner is a charitable corporation.

5. The Board of Directors of Petitioner met pursuant to duly given notice on December 29, 2021 at which meeting a quorum was present and all of the members of the Board of Directors of Petitioner voted adopt a Plan of Dissolution (the “Plan”) and authorized the filing of a Certificate of Dissolution in accordance with Section 1002 of the N-PCL.

6. The sole member of Petitioner is New York Congregational Community Services, a New York not-for-profit corporation (the “Member”). The Board of Directors of Member approved the Plan by unanimous vote at a meeting on December 29, 2021, proper notice of which was given and at which a quorum was present.

7. A certified copy of the Plan approved by the Board of Directors of Petitioner and the Board of Directors of the Member is attached hereto as **Exhibit B**.

8. The Petitioner has no assets or liabilities.

9. The Corporation shall request the approval from the Public Health and Health Planning Council before Dissolution

10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Section 1002 of the N-PCL.

[Signature page to follow]

WHEREFORE, Petitioner prays for approval of the Certificate of Dissolution of New York Congregational Nursing Center, a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

Dated: _____, _____, 2022

Hirschen Singer & Epstein LLP
Attorneys for Petitioner, New York
Congregational Nursing Center

By: _____

Erin M. Durkin, Esq.
902 Broadway, 13th Floor
New York, New York 10010
(212) 819-1130

VERIFICATION

STATE OF NEW YORK)
): ss:
COUNTY OF _____)

THOMAS BETTRIDGE, being duly sworn, deposes and says: he is the DIRECTOR of Petitioner, New York Congregational Nursing Center; that he has read the foregoing Petition and knows the contents thereof; and that the same is true to deponent's own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters, deponent believes them to be true.

This verification is made by deponent because New York Congregational Nursing Center is a not-for-profit corporation, and deponent is an officer thereof, to wit its DIRECTOR

THOMAS BETTRIDGE

Sworn to before me this
___ day of _____, 2022

Notary Public

**CERTIFICATE OF DISSOLUTION
OF
NEW YORK CONGREGATIONAL NURSING CENTER**

**PURSUANT TO
SECTION 1003 OF THE NOT-FOR-PROFIT CORPORATION LAW**

THE UNDERSIGNED, for the purpose of dissolving a corporation pursuant to Section 1003 of the Not-for-Profit Corporation Law of the State of New York, hereby certifies:

ARTICLE I

The name of the corporation is NEW YORK CONGREGATIONAL NURSING CENTER and is hereinafter referred to in this Certificate of Dissolution as the "Corporation".

ARTICLE II

The Certificate of Incorporation of the Corporation was filed by the Department of State on January 25, 1994. The Corporation was formed under the Not-for-Profit Corporation Law of New York State.

ARTICLE III

The name and address of each officer and director of the Corporation is:

Name of Officer	Address
Kendall Christiansen, Chairperson	151 Maple Street, Brooklyn, New York 11225
Michael Robinson, Secretary/Treasurer	151 Maple Street, Brooklyn, New York 11225
Dr. Esther Siegel, Vice Chairperson	151 Maple Street, Brooklyn, New York 11225
Dr. Margaret L McClure, Director	151 Maple Street, Brooklyn, New York 11225
Michael Sharp, Director	142 Union Steet, Brooklyn, New York 11231
Thomas Bettridge, Director	315 St. Johns Place, Apt 5E, Brooklyn, New York 11238

ARTICLE IV

The dissolution was authorized by a unanimous vote of the Board of Directors of the Corporation and approved by a unanimous vote of the Board of Directors of the sole member of the Corporation.

ARTICLE V

The Corporation elects to dissolve.

ARTICLE VI

At the time of dissolution, the Corporation is a charitable corporation.

ARTICLE VII

The Corporation filed with the Attorney General a certified copy of its Plan of Dissolution.

ARTICLE VIII

The Corporation will file a petition for Approval of the Certificate of Dissolution with the Attorney General with the original certified Plan of Dissolution.

ARTICLE IX


When the Board of Directors authorized and approved of the Plan of Dissolution, the Corporation had no assets or liabilities and did not hold any assets required to be used for a restricted purpose.

ARTICLE X

Prior to filing this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be attached.

(signature page follows)

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate and affirms that the statements contained herein are true under the penalties of perjury this ____ day of ____
____ 2022



Name: Thomas Bettridge

Title: Director

[Signature Page – Certificate of Dissolution – NYCNC]

**CERTIFICATE OF DISSOLUTION
OF
NEW YORK CONGREGATIONAL NURSING CENTER

PURSUANT TO
SECTION 1003 OF THE NOT-FOR-PROFIT CORPORATION LAW**

**HIRSCHEN SINGER & EPSTEIN LLP
902 Broadway, 13th Floor
New York, New York 10010
Attn: Russell A. Kivler, Esq.**

State of New York }
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on **November 21, 2005**



A handwritten signature in black ink, appearing to be "D. H. H.", is written over the seal area.

Special Deputy Secretary of State

VANGUARD

CERTIFICATE OF INCORPORATION

OF

F940125000063

NEW YORK CONGREGATIONAL NURSING CENTER

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned incorporator hereby forms a corporation under the Not-for-Profit Corporation Law of the State of New York:

1. The name of the Corporation is NEW YORK CONGREGATIONAL NURSING CENTER.

2. The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.

3. The purposes to be promoted and carried out and the activities to be conducted by the Corporation are as follows:

(a) To provide, on a non-profit basis, nursing home facilities and services for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, where no adequate housing exists for such groups, pursuant to Section 232 of the National Housing Act, as amended, and to these ends to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home facility and non-occupant services program pursuant to the terms and provisions of the Public Health Law;

(b) To apply for, obtain and contract with any Federal agency or department for a direct loan or loans or other financial assistance for the provision of nursing care and health-related services and the development and construction of a nursing home facility;

(c) To purchase, receive, hold, lease or otherwise acquire and to sell, convey, exchange, mortgage, lease or otherwise trade in real or personal property of every kind and description or any interest therein;

(d) To raise funds by borrowing, by subscription, by gift or other lawful means from individuals, local governmental bodies, corporations, associations or organizations and to administer such funds solely to further the purposes of the Corporation;

(e) To accept subventions from members or non-members on terms not inconsistent with the Not-for-Profit Corporation Law and to issue certificates therefor; and

4. Notwithstanding any other provisions hereof, the Corporation shall not be operated for profit and no part of the income or net earnings of the Corporation shall be distributable to, or shall inure to the benefit of, any director or officer of

2

the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation); and no director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on the dissolution of the Corporation. 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 or intervene in any political campaign on behalf of any candidate for public office.

5. The Corporation shall have all the powers and privileges which by the laws of the State of New York is or may hereafter be conferred upon corporations without capital stock. Without limiting the foregoing, the Corporation shall have the power to do and perform all acts reasonably necessary to accomplish the purposes of the Corporation, including the execution of a Regulatory Agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the Corporation, its successors and assigns, so long as a mortgage on the Corporation's property is insured or held by the Secretary of Housing and Urban Development.

6. The Corporation shall not have or issue shares of stock or pay dividends.

7. The Corporation shall be a Type B corporation as described in paragraph (b) of Section 201 of the Not-for-Profit Corporation Law.

8. The office of the Corporation is to be located in the County of Kings, State of New York.

9. The period of duration of the Corporation shall be two years from the date of filing of the Certificate of Incorporation with the Department of State.

10. The Corporation shall have no members. The affairs of the Corporation shall be managed by a Board of Directors. With the exception of the initial Board of Directors, the number, the term of office and the manner of appointment of such Board of Directors shall be as set forth in the By-Laws of the Corporation. The initial Board of Directors shall consist of four Directors, which Directors shall hold office until a new Board of Directors is appointed as provided in the By-Laws of the Corporation. The names and addresses of the initial Directors of the Corporation are:

<u>Name</u>	<u>Address</u>
The Reverend Arthur Wells	147-10 41st Avenue Apartment 6-0 Flushing, New York 11355
Betty J. Smith	129 Columbia Heights Apartment 53 Brooklyn, New York 11201
Kendall S. Christiansen	151 Maple Street

41

Brooklyn, New York 11225

John B. Howey

42 Slocum Crescent
Forest Hills, New York 11375

11. Upon the liquidation or dissolution of the Corporation or the winding up of its affairs, the balance of all money and other property held by the Corporation, after payment of all debts and obligations of the Corporation, shall be distributed, except as otherwise provided by law, to an organization or organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, as they may be amended from time to time, and whose purposes include one or more of the purposes set forth in subparagraph (a) of Paragraph 3 hereof.

12. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The post office address of the Corporation to which the Secretary of State shall mail a copy of any notice required by law is 123 Linden Boulevard, Brooklyn, New York 11226.

13. The Corporation may indemnify any director, officer or employee made a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding in accordance with the applicable provisions of the Not-for-Profit Corporation Law, as the same may be amended from time to time.

14. The incorporator of the Corporation is a natural person over the age of 18 years.



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12227

PUBLIC HEALTH COUNCIL

January 11, 1994

Ms. Marsena M. Farris
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, NY 10038

Re: Certificate of Incorporation of New York Congregational
Nursing Center

Dear Ms. Farris:

AFTER INQUIRY and INVESTIGATION and in accordance with
action taken at a meeting of the Public Health Council held on
the 24th day of September, 1993, I hereby certify that the Public
Health Council consents to the filing of the Certificate of
Incorporation of New York Congregational Nursing Center, dated
December 6, 1993.

Sincerely,

Karen S. Westervelt
Executive Secretary

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STATE OF NEW YORK
DEPARTMENT OF STATE
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CERTIFICATE OF INCORPORATION

OF

NEW YORK CONGREGATIONAL NURSING CENTER

Under Section 402 of the Not-for-Profit Corporation Law

VANGUARD

BILLED

Handwritten initials

JAN 13 12 22 PM '84

16, W. J. E. H. S. I. WICKERSHAM & TAFT
100 Maiden Lane
New York, New York 10038

Handwritten signature

State of New York }
Department of State } SS:

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on **November 21, 2005**



A handwritten signature in black ink, appearing to read "R. H. H. Co.", is written over the seal area.

Special Deputy Secretary of State

VANGUARD

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION OF
NEW YORK CONGREGATIONAL NURSING CENTER
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned certifies:

F 940 324000 511

1. The name of the corporation is New York Congregational Nursing Center (the "Corporation").

2. The certificate of incorporation of the Corporation was filed by the Department of State on January 25, 1994, under the Not-for-Profit Corporation Law of the State of New York.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation as defined in Section 201 of that law.

4. The Corporation designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process served upon him or her is as follows: c/o the Corporation, 123 Linden Boulevard, Brooklyn, New York 11226.

5. The certificate of incorporation is hereby amended as follows to incorporate tax exemption language required by the Internal Revenue Service:

a. To add the following language to the Internal Revenue Code provisions already contained in paragraph 4:

"Notwithstanding any other provisions of this certificate of incorporation, the organization is organized exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1954, and shall not carry on any activities not permitted to be carried on by an organization exempt from Federal income tax under I.R.C. Section 501(c)(3) or corresponding provisions of any subsequent Federal tax laws."

6. The above amendment to the certificate of incorporation was authorized by a written consent signed by the incorporator. There are no members of record or subscribers whose subscription has been accepted.

1

I hereby affirm under the penalties of perjury, that the statements made in the foregoing Certificate of Amendment of the Certificate of Incorporation of New York Congregational Nursing Center are true.

Dated this 21st day of March, 1994

Peter G. Bergmann

Peter G. Bergmann
Incorporator

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On this 21st day of March, 1994, before me personally appeared Peter G. Bergmann, to me known and known to me to be the person who executed the foregoing Certificate of Amendment of the Certificate of Incorporation of New York Congregational Nursing Center and he duly acknowledged to me that he executed the same.

Catherine A. Nulty

Notary Public

My Commission Expires: February 2, 1996

CATHERINE A. NULTY
Notary Public, State of New York
No. 4851684
Qualified in Nassau County
Commission Expires February 2, 1996

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STATE OF NEW YORK
DEPARTMENT OF STATE
FEB MAR 24 1954
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BY:
King

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION OF
NEW YORK CONGRESSIONAL HOUSING CENTER
UNDER SECTION 903 OF THE NOT-FOR-PROFIT CORPORATION LAW

9408240057

VANGUARD

BILLED

DM

Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, New York 10038

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State of New York }
Department of State } ss:

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on

November 21, 2005



A handwritten signature in black ink, appearing to read "R. H. H. Co.", is written over the seal area.

Special Deputy Secretary of State

F950714000375

VANGUARD-52

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION OF
NEW YORK CONGREGATIONAL NURSING CENTER
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, being the President and Secretary, respectively, of New York Congregational Nursing Center, hereby certify:

1. The name of the corporation is New York Congregational Nursing Center (the "Corporation").

2. The certificate of incorporation of the Corporation was filed by the Department of State on January 25, 1994, under the Not-for-Profit Corporation Law of the State of New York. The first certificate of amendment to the certificate of incorporation was filed by the Department of State on March 24, 1994.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation as defined in Section 201 of that law.

4. The certificate of incorporation is hereby amended as follows:

(a) Article 9 of said certificate of incorporation, which sets forth a duration of the Corporation of two years from the date of filing of the Certificate of Incorporation with the Department of State, is hereby deleted in its entirety and the following Article 9 is inserted in its place and shall read as follows:

"9. The duration of the Corporation shall be perpetual."

(b) The following provisions shall be added to the certificate of incorporation as a new Article 15. These provisions are required by the U.S. Department of Housing and Urban Development, Office of Housing, Federal Housing Commissioner:

"15.

(a) The Corporation is irrevocably dedicated to and operated exclusively for, non-profit purposes, and no part of the income or assets of the Corporation shall be distributed to, nor inure to the benefit of, any individual."

(b) In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not

be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed only to an organization or organizations created and operated for non-profit purposes similar to those of the Corporation, provided, however, that the Corporation shall at all times have the power to convey any or all of its property to the Secretary of Housing and Urban Development or his/her nominee."

"(c) The directors of the Corporation shall serve without compensation."

"(d) So long as a mortgage on the Corporation's property is insured or held by the Secretary of Housing and Urban Development, these Articles may not be amended without the prior written approval of said Secretary."

5. The above amendments to the certificate of incorporation were authorized by a unanimous written consent of the Board of Directors. There are no members of record eligible to vote or subscribers whose subscription has been accepted.

6. The Corporation designates the Secretary of State of the State of New York as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process served upon him or her is as follows: c/o the Corporation, 123 Linden Boulevard, Brooklyn, New York 11226.

We hereby affirm, under the penalties of perjury, that the statements made in the foregoing Second Certificate of Amendment of the Certificate of Incorporation of New York Congregational Nursing Center are true.

Dated this 19th day of
June, 1995

Kendall Christ

Kendall S. Christiansen
President

Betty J. Smith

B.J. Smith
Secretary



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

July 13, 1995

Ms. Marsena M. Farris
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, NY 10038

Re: Certificate of Amendment of the Certificate of Incorporation
of New York Congregational Nursing Center

Dear Ms. Farris:

AFTER INQUIRY and INVESTIGATION and in accordance with
action taken at a meeting of the Public Health Council held on
the 24th day of September, 1993, I hereby certify that the Public
Health Council consents to the filing of the Certificate of
Amendment to the Certificate of Incorporation of New York
Congregational Nursing Center, dated June 19, 1995.

Sincerely,

Karen S. Westervelt
Executive Secretary

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FILED
JUL 14 12 07 PM '95

JUL 14 12 07 PM '95

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

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STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUL 14 1995
TAXES
King

NEW YORK CONGREGATIONAL NURSING CENTER
Under Section 803 of the Not-For-Profit Corporation Law

King

VANGUARD-52

FILED:
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, New York 10038

BILLED

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FILING RECEIPT

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ENTITY NAME: NEW YORK CONGREGATIONAL NURSING CENTER

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PROCESS PROVISIONS

COUNTY: KING

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FILED:08/26/2008 DURATION:***** CASH#:080826000394 FILM #:080826000367

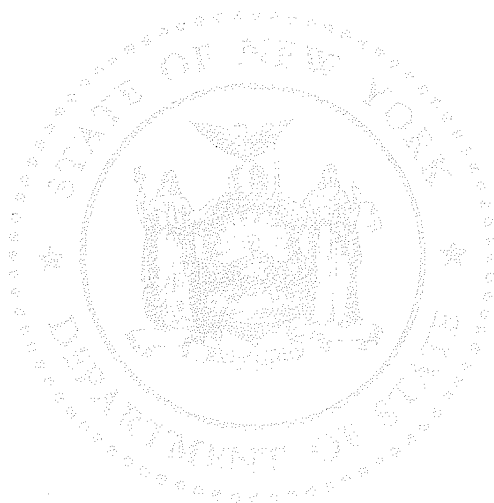
FILER:

HIRSCHEN SINGER & EPSTEIN LLP
ATTN: ALAN EPSTEIN, ESQ.
902 BROADWAY, 13TH FL.
NEW YORK, NY 10010

ADDRESS FOR PROCESS:

THE CORPORATION
135 LINDEN BOULEVARD
BROOKLYN, NY 11226

REGISTERED AGENT:



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SERVICE COMPANY: UNITED CORPORATE SERVICES - 37

SERVICE CODE: 37

FEEs	90.00

FILING	30.00
TAX	0.00
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COPIES	10.00
HANDLING	50.00

PAYMENTS	90.00

CASH	0.00
CHECK	0.00
CHARGE	0.00
DRAWDOWN	90.00
OPAL	0.00
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DOS-1025 (04/2007)

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and the official seal of the Department of State, at the City of Albany, on August 27, 2008.

Paul LaPointe

Paul LaPointe
Special Deputy Secretary of State

**CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION
OF
NEW YORK CONGREGATIONAL NURSING CENTER

UNDER SECTION 803 OF THE
NEW YORK STATE NOT-FOR-PROFIT CORPORATION LAW**

I, the undersigned, being the Chairperson of **NEW YORK CONGREGATIONAL NURSING CENTER**, do hereby certify that:

1. The name of the corporation is **NEW YORK CONGREGATIONAL NURSING CENTER** (hereinafter referred to as the "Company").

2. The Certificate of Incorporation of the Company was filed by the Department of State on January 25, 1994, under the Not-For-Profit Corporation Law of the State of New York. The first certificate of amendment to the certificate of incorporation was filed by the Department of State on March 24, 1994, and the second certificate of amendment to the certificate of incorporation was filed by the Department of State on July 14, 1995.

3. The Company is a corporation, as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B Not-For-Profit Corporation as defined in Section 201 of the Not-For-Profit Corporation Law.

4. The current tenth paragraph of the Certificate of Incorporation is as follows:

10. The Corporation shall have no members. The affairs of the Corporation shall be managed by a Board of Directors. With the exception of the initial Board of Directors, the number, the term of office and the manner of appointment of such Board of Directors shall be as set forth in the By-laws of the Corporation. The initial Board of Directors shall consist of four Directors, which Directors shall hold office until a new Board of Directors is appointed as provided in the By-Laws of the Corporation. The names and addresses of the initial Directors of the Corporation are:

Name

Address

The Reverend Arthur Wells

147-10 41st Avenue
Apartment 6-0

Flushing, New York 11355

Betty J. Smith

129 Columbia Heights
Apartment 53
Brooklyn, New York 11201

Kendall S. Christiansen

151 Maple Street
Brooklyn, New York 11225

John B. Howey

42 Slocum Crescent
Forest Hills, New York 11375

5. The tenth paragraph of the Certificate of Incorporation of the Company shall be amended so that its first sentence, which states that the Company shall have no members, is hereby deleted in order to permit the Company to, at its option, have one or more members. No other language is being added to or substituted for any of the remaining existing language in the tenth paragraph of the Certificate of Incorporation.

6. The Secretary of State is hereby designated by the Company as the agent upon whom process against it may be served. The post office address of the Company to which the Secretary of State shall mail a copy of any process against the Company served upon him/her is c/o the Company, 135 Linden Boulevard, Brooklyn, New York 11226.

7. This Amendment to the Certificate of Incorporation of the Company was duly authorized by the consent of a majority of the members of the entire Board of Directors of the Company, voting in person at a meeting duly called and held for that purpose on the 21st day of June, 2007, there being no members entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate and affirms that the statements contained herein are true under the penalties of perjury this 20th day of December, 2007.



By: Kendall Christiansen,
Chairman of the Board of Directors

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CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION
OF
NEW YORK CONGREGATIONAL NURSING CENTER

UNDER SECTION 803 OF THE
NEW YORK STATE NOT-FOR-PROFIT CORPORATION LAW

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Hirschen Singer & Epstein LLP
902 Broadway, 13th Fl.
New York, New York 10010
Attn: Alan Epstein, Esq.

Cust Ref New 10 84560

ICC
STATE OF NEW YORK
DEPARTMENT OF STATE

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AMENDED AND RESTATED BY-LAWS
OF
NEW YORK CONGREGATIONAL NURSING CENTER

ARTICLE I

NAME, SEAL AND OFFICES

Section 1. Name. The name of this corporation shall be New York Congregational Nursing Center (the "Corporation").

Section 2. Seal. The Board of directors of the Corporation (the "Board") may, at its pleasure, obtain a seal for the Corporation which may be in whatever form is desired by the Board.

Section 3. Offices. The Corporation may have offices in such places as the Board may from time to time determine or the purposes of the Corporation may require.

ARTICLE II

MEMBERSHIP

Section 1. Qualification. The Corporation shall have one member. The sole member of the Corporation shall be New York Congregational Community Services, a New York not-for-profit corporation ("NYCCS"). The board of directors of NYCCS shall exercise the Corporation's membership rights and obligations. NYCCS is referred to herein as the "Member."

Section 2. Meetings. There shall be an annual meeting of the Member, which shall be held on such date and at such time and place as are designated by the Member. Special meetings of the Member may be called at any time by the Member or as specified in the by-laws of the Member.

ARTICLE III

BOARD OF DIRECTORS

Section 1. Powers and Duties. The Board shall manage and control the affairs and property of the Corporation. All corporate powers, except such as are otherwise provided for in the Certificate of Incorporation, these By-Laws, or the laws of the State of New York, shall be and hereby are vested in and shall be exercised by the Board. The Board may, except as otherwise provided by the laws of the State of New York, delegate to committees of its own number, or to officers of the Corporation, such powers as it may see fit.

Section 2. Number and Election; Term of Office; Removal; and Resignation.

a. Number and Election. The Board shall consist of at least three (3) but no more than seven (7) directors. The number of directors may be fixed from time to time by the Member. No decrease in the number of directors shall serve to diminish the term of any director then in office. The directors shall be elected at the annual meeting of the Member. A vacancy on the Board arising at any time and from any cause may be filled for the unexpired term by the Member.

b. Term of Office. The terms of office of all directors shall expire at the next annual meeting of the Member following their election and, in any event, each director shall continue in office until his or her successor shall have been elected and qualified or until his or her death, resignation or removal. All directors are eligible for unlimited reelection.

c. Removal. Any director may be removed with or without cause by the Member.

d. Resignation. Any director may resign at any time by giving written notice of such resignation to the President/CEO of the Corporation.

Section 3. Annual Meeting; Notice. The annual meeting of the Board shall be held at a date, time and place fixed by the Board. Notice of the date, time and place of such annual meeting shall be given in such form as the Board may determine.

Section 4. Special Meetings; Notice. A special meeting of the Board may be called at any time by the President/CEO or any director. Notice of the date, time and place of such special meeting shall be given to all directors in such form as the Board may determine. Except as otherwise provided in these By-Laws, any business may be transacted at any duly called Board meeting.

Section 5. Regular Meetings; Notice. Regular meetings of the Board shall be held at least three times annually upon the call of the Chairperson of the Board after consultation with the other directors. Notice of the date, time and place of such special meeting shall be given to all directors in such form as the Board may determine.

Section 6. Quorum. At all meetings of the Board, a majority of the entire Board shall constitute a quorum for the transaction of business.

Section 7. Action of the Board. The action of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as otherwise provided by these By-Laws. Any member of the Board may participate in a meeting thereof by means of a conference telephone or similar device by which all persons can hear all other persons participating in the meeting at the same time. Any Board action may be taken without a meeting if all members of the Board consent in writing.

Section 8. Adjournment. At any meeting of the Board, whether or not a quorum is present, a majority of the directors present may adjourn the meeting to another time and place. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 9. Organization. At all meetings of the Board, the Chairperson of the Board, or, in his or her absence, the Vice Chairperson shall preside. The Secretary of the Board shall act as secretary at all meetings of the Board. In the absence of the Secretary, the presiding officer shall appoint any person to act as secretary of the meeting.

Section 10. Compensation. Directors shall serve without compensation for their services as such.

ARTICLE IV

BOARD OFFICERS

Section 1. Board Officers. The Chairperson, Vice Chair, Secretary, and Treasurer shall be responsible for the function and oversight of the Board and are collectively referred to hereafter as the "Board Officers". Each Board Officer must be a director of the Corporation. Any two or more Board Offices may be held by the same individual, except the offices of Chairperson and Secretary. No instrument to be signed by more than one Board Officer may be signed by one person in more than one capacity.

Section 2. Election Term of Office Qualifications and Removal. The Board Officers shall be elected at the annual meeting of the Board. Each shall be elected for a term fixed by the Board, unless otherwise specified in these By-Laws, and each shall serve until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal. Any Board Officer may be removed, with or without cause, by a vote of a majority of the directors then in office.

Section 3. Vacancies. Any vacancy in any office arising at any time from any cause may be filled for the unexpired term by a majority vote of the directors then in office.

Section 4. Chairperson. The Chairperson shall:

- (a) preside at all meetings of the Board;
- (b) perform all duties prescribed by the Board from time to time; and
- (c) serve as an ex-officio voting member of all committees of the Corporation.

Section 5. Vice Chairperson. In the absence of the Chairperson, or in the event of his or her inability or refusal to act, the Vice Chairperson shall perform the duties of the Chairperson and, when so acting, the Vice Chairperson shall have the same authority, responsibility, and obligations as the Chairperson. The Vice Chairperson shall perform such other duties as from time to time may be assigned by the Chairperson or Board.

Section 6. Secretary. The Secretary shall:

(a) keep, or cause to be kept, the minutes of all meetings of the Board, record attendance of the directors at each meeting, and give all notices to the directors that may be required by these By-laws or by statute;

(b) be the custodian of the books and corporate seal of the Corporation, and keep and affix the corporate seal as required; and

(c) perform all duties incumbent to the office of Secretary.

Section 7. Treasurer. The Treasurer shall:

(a) ensure that the finances of the Corporation are handled in an honest and prudent manner, and that its books, records, accounts, and finances are maintained in a timely, complete and accurate manner in accordance with sound accounting practices and principles and all applicable law;

(b) oversee the selection and engagement of an independent certified public accountant and auditor of the Corporation; and

(c) perform all other duties and acts incident to the office of the Treasurer.

ARTICLE V

CORPORATE OFFICERS

Section 1. Corporate Officers. The President/CEO and Vice President/CFO shall be responsible for the implementation of the policies of the Corporation and are collectively referred to hereafter as the "Corporate Officers". The Corporate Officers are the officers of the Corporation under Section 713 of the NPCL.

Section 2. Election Term of Office Qualifications and Removal. The Corporate Officers shall be elected at the annual meeting of the Board. Each shall be elected for a term fixed by the Board, unless otherwise specified in these By-Laws, and each shall serve until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal. Any Corporate Officer may be removed, with or without cause, by a vote of a majority of the directors then in office. No Corporate Officer is required to be a member of the Board.

Section 3. Vacancies. Any vacancy in any office arising at any time from any cause may be filled for the unexpired term by a majority vote of the directors then in office.

Section 4. President/CEO. The President/CEO shall be the chief executive officer of the Corporation, responsible for the day-to-day management and direction of the Corporation. In exercising the day-to-day management responsibility over the Corporation, the President and CEO shall:

- (a) implement the Policies of the Board and prepare an annual report and an annual budget for review and approval by the Board;
- (b) hire, promote, discipline, and discharge staff; and
- (c) represent the Corporation at internal and external meetings and proceedings, and perform all duties customarily incident to the office of the President and CEO.

Section 5. Vice President/CFO. The Vice President/CFO shall:

- (a) keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses. The books of account shall at all reasonable times be open to inspection by any director;
- (b) deposit all money and other valuables in the name and to the credit of the Corporation;
- (c) disburse the Corporation's funds in accordance with the policies of the Corporation;
- (d) render to the President/CEO and the directors, whenever they so request, an account of all his or her transactions as Vice President/CFO and of the Corporation's financial condition; and
- (e) have any other powers and performs any other duties that are prescribed by the Board.

ARTICLE VI

CONFLICT OF INTEREST POLICY

Section 1. Conflict of Interest.

- (a) The directors, Board Officers, Corporate Officers and senior staff of the Corporation are expected and required to discharge their duties in good faith in the best interests of the Corporation without creating an impropriety or the appearance of impropriety.
- (b) The directors shall not participate in the consideration of any matter that in fact, or in appearance, involves a conflict between the interests of the director and the interests of the Corporation, nor may a director use privileged information that he or she has gained in the course of service to the Corporation for personal benefit or gain.
- (c) During the director's term, or within one year of its end, the director or any related person, or entity, shall not engage in any dealings with the Corporation that in fact, or in appearance, benefits the director or related person or entity. This provision shall not prevent a director or related person or entity from providing goods and services to the Corporation voluntarily without charge.

ARTICLE VII

COMMITTEES

Section 1. Executive Committee and Other Standing Committees of the Board of Directors. The Board, by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee and other Standing Committees to consist of the Chairperson and at least two other directors. Each member of the Executive Committee and any Standing Committees, other than the Chairperson, shall serve at the pleasure of the Board, which shall also have full discretion in determining the number of members of the Executive Committee and Standing Committees. The Executive Committee shall have and may exercise all of the powers and authority of the Board, to the extent allowed by applicable New York law, but shall be required to notify the full Board of any actions it takes or decisions made, other than those in the ordinary course of operations, within a reasonable time thereafter. Standing Committees shall have the powers specifically provided in the resolutions creating them which are not inconsistent with New York law.

Section 2. Committees of the Corporation. The Board may, from time to time and by a majority vote of the directors then in office, appoint committees for any purpose and may delegate to each such committee such powers as the Board may deem appropriate and which are not inconsistent with New York law. In appointing a committee of the Corporation, the Board shall appoint the chair of the committee, shall specify the term of the committee's existence, and shall define the committee's powers and duties. Each committee shall consist of at least one director and shall have the power to further delegate such powers if the Board so provides in appointing the committee.

Section 3. Quorum. A majority of all of the members of the Executive Committee, any Standing Committees, or any other committees established by the Board shall constitute a quorum at any meeting thereof.

Section 4. Procedures. Procedures of the Executive Committee, any Standing Committees, and any other committees shall be governed by rules fixed by the Board. All committee members shall serve at the pleasure of the Board.

ARTICLE VIII

AGENTS AND REPRESENTATIVES

The Board may appoint such agents and representatives of the Corporation with such powers and to perform such acts or duties on behalf of the Corporation as the Board may see fit, so far as may be consistent with these By-Laws, and to the extent authorized or permitted by law.

ARTICLE IX

CONTRACTS, LOANS, CHECKS, BANK ACCOUNTS, AND INVESTMENTS

Section 1. Contracts. The Board, except as otherwise provided in these By-Laws, may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to a specific instance. Unless authorized by the Board pursuant to this Article IX, Section 1, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit, or render it liable pecuniarily, for any purpose or to any amount.

Section 2. Banks; Checks. The Board shall from time to time and as necessary select such banks or depositories as it shall deem proper for the funds of the Corporation. The Board shall determine who shall be authorized from time to time on the Corporation's behalf to sign checks, drafts or other orders for the payment of money.

Section 3. Investments. The funds of the Corporation may be retained in whole or in part in cash, or may be invested and reinvested from time to time in such property, real, personal or otherwise, or stocks, bonds or other securities.

ARTICLE X

INDEMNIFICATION

Section 1. In General. The Corporation shall indemnify each member of its Board, as described in Article III hereof; each of its Board Officers, as described in Article IV hereof; each of its Corporate Officers as described in Article V hereof; any employee designated for indemnification by the Board; and each person serving at the request of the Corporation as a trustee, director or officer of another corporation, partnership, joint venture, trust or other enterprise (hereinafter all referred to more generally as "directors and officers"), for the defense of civil or criminal actions or proceedings, whether or not brought by or in the right of the Corporation, in a manner and to the fullest extent now or hereafter permitted by the Not-For-Profit Corporation Law of the State of New York. Such indemnification shall include the advancement of expenses.

Section 2. Applicability. Every reference in this Article X to directors and officers of the Corporation shall include every director and officer thereof or former director and officer thereof. The right of indemnification herein provided for shall be in addition to any and all rights to which any director or officer of the Corporation otherwise might be entitled, and the provisions hereof shall neither impair nor adversely affect such rights.

ARTICLE XI

FISCAL YEAR

The fiscal year of the Corporation shall be the calendar year.

ARTICLE XII

AMENDMENTS

The Member shall have the sole power to make, alter, amend and repeal the By-Laws and Certificate of Incorporation of the Corporation.

ARTICLE XIII

LIMITATIONS

Notwithstanding any other provision of these By-Laws, no director, officer, employee or representative of the Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization (i) exempt from Federal income tax under I.R.C. §501(a), as an organization described in I.R.C. §501(c)(3) and (ii) contributions to which are deductible under I.R.C. §170(c)(2).

* * * *

**RESOLUTIONS OF
THE BOARD OF DIRECTORS**

OF

NEW YORK CONGREGATIONAL COMMUNITY SERVICES

December 29, 2021

The following resolutions were adopted at a meeting of the New York Congregational Community Services (the “Corporation”), proper notice of which was given to, or waived by, each of the Directors, and at which a quorum was present:

WHEREAS, the Corporation is a corporation formed pursuant to the Not-for-Profit Corporation Law of the State of New York (“N-PCL”), and was formed as a Type B corporation under Section 201(b) of the N-PCL; and

WHEREAS, the Corporation is the sole member of New York Congregational Nursing Center, a New York not-for-profit corporation duly organized and validly existing under the N-PCL and formed as a Type B corporation with similar purposes to the Corporation (the “Petitioner”); and

WHEREAS, the Petitioner desires to adopt a Plan of Dissolution (the “Plan”), pursuant to which the Petitioner will be dissolved; and

WHEREAS, the Petitioner has no assets or liabilities; and

WHEREAS, pursuant to Section 1003 of the N-PCL, the Petitioner intends to submit a Verified Petition for approval of the Plan to the Attorney General of the State of New York (the “Attorney General”), which petition shall include an executed certificate of dissolution pursuant to Section 1003 of the N-PCL (the “Certificate of Dissolution”); and

WHEREAS, the Petitioner shall request a consent to dissolution from the New York State Department of Taxation Finance (“NYS DOF”); and

WHEREAS, the Petitioner shall submit the Certificate of Dissolution with the Attorney General endorsement and NYS DOF consent to the New York State Department of State for filing; and

WHEREAS, the Corporation has reviewed the Plan and has approved the transactions contemplated herein NOW THEREFORE, BE IT

RESOLVED, the Board of Directors of the Corporation, the sole member of Petitioner, hereby authorizes and directs the Petitioner to (i) adopt the Plan, (ii) submit the Verified Petition and executed Certificate of Dissolution to the Attorney General, (iii) upon receipt of an endorsed Certificate of Dissolution from the Attorney General, submit the Certificate of Dissolution and all required approvals and attachments (including the NYS DOF consent) to the New York State

Department of State for filing (items (i) through (iii), the “Dissolution Actions”); and hereby accepts, approves and ratifies all acts taken by the officers and directors of the Petitioner and their appointed and retained representatives, agents, consultants, advisors, and counsels in, *inter alia*, conceiving, planning, analyzing, modeling, drafting, documenting, directing and implementing the Dissolution Actions; and be it further

RESOLVED, that each of the officers of the Corporation, be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and deliver all agreements, documents and instruments that are required to effectuate the Dissolution Actions, the execution thereof by such officer or such other authorized signatory to be conclusive evidence of the approval by such officer or other authorized signatory of such agreements, documents, and instruments; and be it further

RESOLVED, that action by any of the officers of the Corporation, acting on behalf of the Corporation, and any person or persons designated, appointed, or retained and duly authorized so to act by any such officer of the Corporation, to do and perform, or cause to be done and performed, or to execute and deliver, or cause to be executed and delivered, in the name and on behalf of the Corporation acting in its individual capacity, any and all such other ancillary, collateral, additional or supplemental documentation, including but not limited to notices, requests, demands, or directions; consents, approvals, acceptances, appointments, applications, or waivers; certificates, affidavits, or other further assurances; other agreements, instruments amendments, or modifications, under organizational seal of the Corporation if required, as they, or any of them, may deem to be necessary or advisable in order to carry into effect the intent of the foregoing resolutions or to comply with the requirements of the instruments approved or authorized by the foregoing resolutions is hereby approved, ratified and confirmed; and be it further

RESOLVED, that any actions to date of the officers of the Corporation, in respect to the fulfillment of the intent of these resolutions, including without limitation the execution and delivery of any agreements, instruments and documents in the name and on behalf of the Corporation or otherwise, are hereby approved, ratified and confirmed in all respects.

[signature page follows]

I, Thomas Bettridge, of New York Congregational Community Services, do hereby certify that the foregoing resolutions were adopted at a meeting of the Board of Directors of New York Congregational Community Services, held on the date and year first set forth above.



By: Thomas Bettridge

Title: Vice Chairperson

[Signature Page – Member Resolution to Dissolve – NYCNC]

**RESOLUTION OF
THE BOARD OF DIRECTORS**

OF

NEW YORK CONGREGATIONAL NURSING CENTER

December 29, 2021

The following resolutions were adopted at a meeting of the New York Congregational Nursing Center (the “Corporation”), proper notice of which was given to, or waived by, each of the Directors, and at which a quorum was present:

WHEREAS, the Corporation is a corporation formed pursuant to the Not-for-Profit Corporation Law of the State of New York (“N-PCL”), and was formed as a Type B corporation under Section 201(b) of the N-PCL; and

WHEREAS, the sole member of the Corporation is New York Congregational Community Services, a New York not-for-profit corporation duly organized and validly existing under the N-PCL and formed as a Type B corporation with similar purposes to the Corporation (the “Member”); and

WHEREAS, the Corporation has no assets; and

WHEREAS, the Corporation desires to adopt a Plan of Dissolution (the “Plan”), pursuant to which the Corporation will be dissolved; and

WHEREAS, pursuant to Section 1003 of the N-PCL, the Corporation intends to submit a Verified Petition for approval of the Plan to the Attorney General of the State of New York (the “Attorney General”), which petition shall include an executed certificate of dissolution pursuant to Section 1003 of the N-PCL (the “Certificate of Dissolution”); and

WHEREAS, the Corporation shall request a consent to dissolution from the New York State Department of Taxation Finance (“NYS DOF”); and

WHEREAS, the Corporation shall submit the Certificate of Dissolution with the Attorney General endorsement and NYS DOF consent to the New York State Department of State for filing; and

NOW THEREFORE, BE IT

RESOLVED, the Board of Directors of the Corporation hereby authorizes and directs the Corporation to (i) adopt the Plan, (ii) submit the Verified Petition and executed Certificate of Dissolution to the Attorney General, (iii) upon receipt of an endorsed Certificate of Dissolution from the Attorney General, submit the Certificate of Dissolution and all required approvals and attachments (including the NYS DOF consent) to the New York State Department of State for filing (items (i) through (iii), the “Dissolution Actions”); and hereby accepts, approves and ratifies all acts taken by the officers and directors of the Corporation and their appointed and retained

representatives, agents, consultants, advisors, and counsels in, *inter alia*, conceiving, planning, analyzing, modeling, drafting, documenting, directing and implementing the Dissolution Actions; and be it further

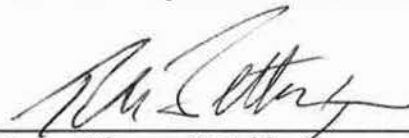
RESOLVED, that each of the officers of the Corporation, be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and deliver all agreements, documents and instruments that are required to effectuate the Dissolution Actions, the execution thereof by such officer or such other authorized signatory to be conclusive evidence of the approval by such officer or other authorized signatory of such agreements, documents, and instruments; and be it further

RESOLVED, that action by any of the officers of the Corporation, acting on behalf of the Corporation, and any person or persons designated, appointed, or retained and duly authorized so to act by any such officer of the Corporation, to do and perform, or cause to be done and performed, or to execute and deliver, or cause to be executed and delivered, in the name and on behalf of the Corporation acting in its individual capacity, any and all such other ancillary, collateral, additional or supplemental documentation, including but not limited to notices, requests, demands, or directions; consents, approvals, acceptances, appointments, applications, or waivers; certificates, affidavits, or other further assurances; other agreements, instruments amendments, or modifications, under organizational seal of the Corporation if required, as they, or any of them, may deem to be necessary or advisable in order to carry into effect the intent of the foregoing resolutions or to comply with the requirements of the instruments approved or authorized by the foregoing resolutions is hereby approved, ratified and confirmed; and be it further

RESOLVED, that any actions to date of the officers of the Corporation, in respect to the fulfillment of the intent of these resolutions, including without limitation the execution and delivery of any agreements, instruments and documents in the name and on behalf of the Corporation or otherwise, are hereby approved, ratified and confirmed in all respects.

[signature page follows]

I, Thomas Bettridge, Director of New York Congregational Nursing Center, do hereby certify that the foregoing resolutions were adopted at a meeting of the Board of Directors of New York Congregational Nursing Center, held on the date and year first set forth above.



By: Thomas Bettridge
Title: Director

[Signature Page – Board Resolution to Dissolve – NYCNC]

MEMORANDUM

To: Kathy Marks
General Counsel

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

Date: May 5, 2023

Subject: Proposed Dissolution of Niagara Lutheran Home & Rehabilitation Center, Inc.

The attached package was prepared by Mark Schweitzer, Associate Attorney, 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 memo and kindly return the package to Mark and to me for further processing.

Thank you.

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: May 5, 2023

Subject: Proposed Dissolution of Niagara Lutheran Home & Rehabilitation Center, 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 legal counsel requesting approval of the proposed Certificate of Dissolution of Niagara Lutheran Home & Rehabilitation Center, Inc.;
- 3) A proposed verified petition seeking the Attorney General's approval of the filing of the Certificate of Dissolution of Niagara Lutheran Home & Rehabilitation Center, Inc.;
- 4) An executed Plan of Dissolution and a proposed Certificate of Dissolution of Niagara Lutheran Home & Rehabilitation Center, Inc.;
- 5) Certificate of Incorporation of Niagara Lutheran Home, Inc., Certificates of Amendment of Certificates of Incorporation (Niagara Lutheran Home & Rehabilitation Center, Inc., f/k/a Niagara Lutheran Home, Inc.), and associated documents and consents;
- 6) The Bylaws of Niagara Lutheran Home & Rehabilitation Center, Inc.
- 7) Unanimous written consent of the Board authorizing the dissolution;
- 8) Consent of the sole member authorizing the dissolution;
- 9) Form CHAR500 - 2021 filing for Charitable Organizations.

Attachments

cc: J. Corvino

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *KSM*

Date: May 5, 2023

Subject: Proposed Dissolution of Niagara Lutheran Home & Rehabilitation Center, Inc.

Niagara Lutheran Home & Rehabilitation Center, 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.

Niagara Lutheran Home & Rehabilitation Center, Inc. (“NLHRC”) is a New York not-for-profit corporation that was formed on April 18, 1972, when the entity filed a Certificate of Incorporation for the predecessor corporation, Niagara Lutheran Home, Inc. (“NLH”) with the NYS Department of State. NLH had received approval from the NYS Department of Social Services, and the Public Health Council (“PHC”) to establish and operate a facility with 175 long term care beds. PHC approved of the filing of the Certificate of Incorporation of NLH on September 17, 1971.

On August 11, 1992, the Certificate of Incorporation was amended. The corporate name was changed to the current name, Niagara Lutheran Home & Rehabilitation Center, Inc., and the purposes were changed, notably to operate a Skilled Nursing Facility. PHC approved of this Certificate of Amendment of Certificate of Incorporation on November 20, 1992. On April 28, 1996, the Certificate of Incorporation of NLHRC was amended with non-substantive changes, and on July 5, 1996 PHC provided a no-consent-needed letter.

NLHRC previously owned and operated a nursing home located at 64 Hager Street, Buffalo, New York 14208, known as Niagara Lutheran Home & Rehabilitation Center. In 2014, the assets of NLHRC were transferred to a new owner/operator. Effective May 14, 2014, Petitioner completed a transaction in which it sold, transferred, and assigned Niagara Lutheran Home & Rehabilitation Center, and its associated assets and liabilities to NHRC Acquisition LLC and NHRC Realty Acquisition LLC. This is referenced by CON #142102.

NLHRC is no longer in operation, and per the requestor’s legal counsel has no assets or liabilities, and has been financially dormant for several years. Therefore, NLHRC wishes to formally dissolve its corporation. A 2021 Annual Filing for Charitable Organizations is also attached, showing no assets, liabilities, or income.

NLHRC currently has four directors. The Plan and Certificate were authorized by unanimous written consent of the Petitioner’s Board of Directors on August 11, 2022. A certified copy of such authorizing resolutions is attached. NLHRC currently has one sole member. The Plan and

Certificate were authorized by written consent of the sole member on August 12, 2022. A certified copy of such authorizing resolutions is attached.

Because PHC previously approved the filing of the Certificate of Incorporation of NLHRC, its successor PHHPC must approve of this dissolution. The submitted Petition and Certificate of Dissolution will then be executed/verified and addressed with the Attorney General's Office Charities Bureau and/or the NYS Supreme Court.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and the Certificate of Dissolution. The required documents are attached.

Attachments.

Christopher T. Greene
Partner

September 6, 2022

Via UPS Express

Ms. Colleen M. Leonard
Executive Secretary
Public Health and Health Planning Council
Empire State Plaza
Corning Tower, Room 1805
Albany, NY 12237

Re: Dissolution of Niagara Lutheran Home & Rehabilitation Center, Inc.

Dear Ms. Leonard:

On behalf of our client, Niagara Lutheran Home & Rehabilitation Center, Inc. (“NLHRC”), we are writing to seek approval from the Public Health and Health Planning Council (“PHHPC”) for the dissolution of NLHRC, which is a New York State not-for-profit corporation whose Certificate of Incorporation was approved by PHHPC on September 17, 1972. In 2014, the assets of NLHRC, until that time a skilled nursing facility, were transferred to a new owner/operator. NLHRC has no assets or liabilities and has been financially dormant for several years. NLHRC wishes to formally dissolve as soon as possible.

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

1. Proposed Verified petition to the Attorney General;
2. Plan of Dissolution;
3. Proposed Certificate of Dissolution;
4. Certificate of Incorporation and Amendments;
5. Bylaws as amended; and
6. Unanimous written consent of the Board authorizing the dissolution; and
7. Consent of the sole member authorizing the dissolution.

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

Very truly yours,

Christopher T. Greene

CTG:

ATTORNEY GENERAL OF THE STATE OF NEW YORK
COUNTY OF ERIE

In the Matter of the Application of

NIAGARA LUTHERAN HOME & REHABILITATION
CENTER, INC.,

Petitioner

VERIFIED PETITION

For Approval of a Certificate of Dissolution pursuant to
Section 1002 of the Not-for-Profit Corporation Law

OAG No. _____

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
COUNTY OF ERIE
Buffalo Regional Office
Main Place Tower – Suite 300A
Buffalo, New York 14202

Petitioner, NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC., by Rev. Paul Mertzluft, the Board Chair of Petitioner, for its Verified Petition herein respectfully alleges:

1. Petitioner is a New York not-for-profit corporation.
2. Petitioner, whose principal office is located in the County of Erie, was incorporated pursuant to the Not-for-Profit Corporation Law of the State of New York (the “NPCL”) on April 18, 1972 under the name Niagara Lutheran Home, Inc. A copy of Petitioner’s Certificate of Incorporation, together with all amendments thereto, is attached hereto as **Exhibit A**.
3. A copy of Petitioner’s current bylaws, as amended, is attached hereto as **Exhibit B**.
4. Petitioner’s principal office location is 5959 Broadway, Lancaster, NY 14086.
5. The purposes for which Petitioner was organized, as substantially set forth in its Certificate of Incorporation, as amended, is to:
 - (a) “The Corporation is affiliated with Lutheran churches of the Niagara Frontier. Its purpose is to own, operate and maintain a skilled nursing facility in a Christian environment, and in connection with the foregoing purpose, to provide other human services, as may be determined possible, for aging people in the Western new York area.”
6. Petitioner is a charitable corporation under Section 201 of the NPCL.
7. In furtherance of the foregoing purposes, Petitioner previously owned and operated a not-for-profit nursing home located at 64 Hager Street, Buffalo, New York 14208, known as Niagara Lutheran Home & Rehabilitation Center.

8. Effective May 14, 2014, Petitioner completed a transaction in which it sold, transferred, and assigned Niagara Lutheran Home & Rehabilitation Center, and its associated assets and liabilities to NHRC Acquisition LLC and NHRC Realty Acquisition LLC (the “Transaction”).

9. Petitioner now plans to dissolve in accordance with the Plan of Dissolution attached as **Exhibit C** (the “Plan”) and the Certificate of Dissolution attached as **Exhibit D** (the “Certificate”).

10. Petitioner is dissolving because, following the Transaction, it has no operations and has no assets.

11. Petitioner currently has four directors. The Plan and Certificate were authorized by unanimous written consent of the Petitioner’s Board of Directors on August 11, 2022. A certified copy of such authorizing resolutions is attached as **Exhibit E**.

12. Petitioner currently has one sole member. The Plan and Certificate were authorized by written consent of the sole member on August 12, 2022. A certified copy of such authorizing resolutions is attached as **Exhibit F**.

13. All resolutions authorizing the Plan and Certificate are in full force and effect and have not been modified or rescinded as of the date hereof.

14. Petitioner has no assets to distribute.

15. Petitioner has no liabilities as of the date hereof.

16. Petitioner is not required to file a final financial report with the Charities Bureau because Petitioner is exempt from registration with the Charities Bureau.

17. Petitioner has attached a final financial report with the Charities Bureau as **Exhibit G**.

18. Petitioner has applied to Public Health and Health Planning Council for approval of the Plan and Certificate, and Petitioner will provide confirmation of such approval once received. Other than the approval of Public Health and Health Planning Council and the Attorney General, no other government agency approvals are required for the Plan and Certificate.

19. Petitioner has not made any application similar to this Petition requesting approval of the Plan and Certificate to the Attorney General or to any court.

20. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Section 1003 of the NPCL.

[Remainder of Page Intentionally Left Blank.]

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of Niagara Lutheran Home & Rehabilitation Center, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, Petitioner has caused this Petition to be executed this ____ day of _____, 2022 by:

NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC.

By: _____
Rev. Paul Mertzluftt, Board Chair

VERIFICATION

STATE OF NEW YORK)
) SS:
COUNTY OF _____)

Rev. Paul Mertzlofft, being duly sworn, deposes and says:

I am the Board Chair of Niagara Lutheran Home & Rehabilitation Center, Inc., the not-for-profit corporation named in the above Petition. I make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

Rev. Paul Mertluftt, Board Chair

Sworn to before me this
____ day of _____.

Notary Public

Exhibit A

Niagara Lutheran Home & Rehabilitation Center, Inc. Certificate of Incorporation

See attached.

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC., File Number 982272-9 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on August 01, 2022.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, N. Y. 12224

Telephone 474-7206

September 30, 1971

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

982272

Schutrum, Howder, Palmer
and Martin, Esqs.
Attorneys at Law
43 Court St.
Buffalo, New York 14202

Gentlemen:

Re: NIAGARA LUTHERAN HOME, INC.
Certificate of Incorporation

Due and timely service of the Notice of Application for the approval of the proposed Certificate of Incorporation of the above corporation is hereby admitted.

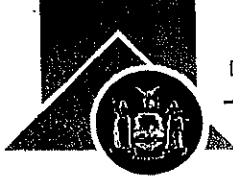
The Attorney General does not intend to appear at the time of application.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By:

Joseph R. Castellani
JOSEPH R. CASTELLANI
Assistant Attorney General



STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY

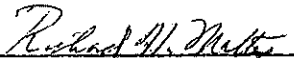
PUBLIC HEALTH COUNCIL

September 17, 1971

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken, after due inquiry and investigation, at a meeting of the Public Health Council held on the 10th day of September, 1971 I hereby certify that the Certificate of Incorporation of The Niagara Lutheran Home, Inc. is APPROVED.

This approval is for the operation of a facility containing 175 long term care beds.


RICHARD H. MATTOX
Executive Secretary

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN
GEORGE BAEHR, M.D.
BLONVA P. BOND
DETLEV BRONK, Ph. D.
GORDON E. BROWN

MORTON P. HYMAN
CHARLES T. LANIGAN
GERALD B. MANLEY, M.D.
GEORGE R. METCALF
W. KENNETH RILAND, D.O.
JOHN P. ROACH, M.D.

HOWARD A. RUSK, M.D.
JOHN M. WALSH
WILLIAM H. WISELY, D. ENG.
HOLLIS S. INGRAHAM, M.D.
EX OFFICIO

CERTIFICATE OF INCORPORATION

OF

NIAGARA LUTHERAN HOME, INC.

Under Section 402 of the Not-For-Profit Corporation Law.

WE, the undersigned, for the purpose of forming a Corporation pursuant to the Not-For-Profit Corporation Law of the State of New York hereby certify:

I

The name of the proposed Corporation is NIAGARA LUTHERAN HOME, INC., (hereinafter referred to as the "Corporation").

II

The Corporation is not formed for pecuniary profit or financial gain.

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

The Corporation is a corporation as defined in subparagraph (A) (5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law.

III

The purpose for which the Corporation is formed is to provide Nursing Home accommodations for sick, invalid, infirm, disabled or convalescent persons, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home.

This Corporation pursuant to Section 201 of the Not-For-Profit Corporation, shall be "Type B".

IV

The territory in which the operations of the Corporation will

be principally conducted in the State of New York.

V

The principal office of the Corporation is to be located in the City of Buffalo, County of Erie and State of New York.

VI

The number of directors of the Corporation shall be not less than three nor more than twenty-three. Directors shall be elected by the members of the Corporation.

VII

The names and residences of the initial Directors are:

<u>Name</u>	<u>Address</u>
Miss Irma C. Belling	182 Payne Avenue, N. Tonawanda, N.Y., 14120
Rev. Sherwood W. Bryant	414 Somerville Avenue, Town of Tonawanda, N.Y.
Mr. Edward W. Francis	649 LaSalle Avenue, Buffalo, New York, 14215
Mr. Herbert G. Frey	William Kidder Road, Lancaster, N.Y., 14086
Mr. Edgar J. Grabau	703 Niagara Parkway, N. Tonawanda, N.Y., 14120
Mr. Rudolph W. Grabau	365 Bernhardt Drive, Snyder, N. Y., 14226
Mr. Calvin J. Haller	235 Westfall Drive, Town of Tonawanda, N. Y.
Dr. George J. Janofsky	205 Wellington Road, Buffalo, N. Y. 14216
Rev. Luther Knauff	557 Old Falls Blvd., N. Tonawanda, N.Y., 14120
Rev. Luther W. Lautenschlager	275 Bryant Street, N. Tonawanda, N.Y., 14120
Mr. Robert A. Lipp	94 Singer Drive, West Seneca, N.Y., 14224
Rev. Samuel McCune	27 Martha, Buffalo, New York, 14215
Mrs. Esther B. Mueller	358 Newburgh Avenue, Buffalo, N.Y., 14215
Mr. Alfred J. Naish	15 Montrose Avenue, Buffalo, New York, 14214
Charles F. O'Conner, MD	91 Westwood Drive, Tonawanda, N.Y., 14150
Mr. Theodore F. Scharf	282 Alienhurst Road, Buffalo, N.Y., 14226
Mr. William E. Schneider	282 Potters Road, Buffalo, N.Y., 14220

4

<u>NAME</u>	<u>ADDRESS</u>
MR. BRUCE R. SCHMIDT	155 Green Acres Road Town of Tonawanda, New York
REV. JOHN M. STRODEL	70 Briar Row Williamsville, New York 14221
MR. EUGENE W. THIEL	7495 Shawnee Road North Tonawanda, New York 14120
DR. WILLIAM C. UMLAND, D. D. S.	2000 Eggert Road Egbertsville, New York 14226
DR. WILLIAM J. WEINBACH, D. D. S.	177 North Maple Drive Williamsville, New York 14221
DR. E. HENRY ZITTEL	8410 Vernon Circle, Williamsville, New York 14221

VII

The duration of the Corporation shall be perpetual.

IX

The Corporation is organized and shall be operated as a non-profit organization, and 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 Articles II and III hereof. No part of the net income or net earnings of the Corporation shall inure to the benefit of profit of any private individual, firm or corporation. No officer or employee of the Corporation 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 Corporation 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.

5

Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation distribute all of the remaining assets of the Corporation exclusively for the purposes of the Corporation or for a similar public use or purpose, to such organization or organizations organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations organized and operated 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 provisions 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 purpose of a similar public use or purpose of the Corporation. In no event shall the assets of this Corporation upon dissolution be distributed to a director, officer, employee or member of the Corporation.

The dissolution of this Corporation and any distribution of the assets of this Corporation incident thereto shall be subject to such laws, if any, then in force as may require the approval thereof or consent thereto by any court or judge thereof having jurisdiction or by any governmental department or agency or official thereof.

6

X.

All of the incorporators of this Corporation are natural persons over the age of 19 years.

XI.

The following consents and approvals are annexed hereto:

~~1. The consent of the Commissioner of Health to the filing of this Certificate of Incorporation with the Secretary of State.~~

1. The approval of a Justice of the Supreme Court, who serves in the district wherein the Corporation is to have an office, to the formation of this Corporation.

2. The approval of the Public Health Council.

XII.

The post office address to which the Secretary of State shall mail a copy of any notice required by law is:

64 Hager Street, Buffalo, New York

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation, in quadruplicate, this 12 day of July, 1971.

Clarence W. Braun
Clarence W. Braun

Bruce R. Schmidt
Bruce R. Schmidt

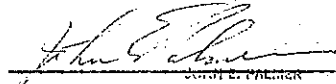
Robert J. Schutrum, Jr.
Robert J. Schutrum, Jr.

STATE OF NEW YORK)
COUNTY OF ERIE : ss

On this 12th day of July, 1971, before me personally came,

7

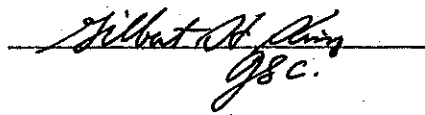
CLARENCE W. BRAUN, BRUCE R. SCHMIDT, and ROBERT J. SCHUTRUM, JR., to me known and known to me to be the persons described in and who executed the foregoing Certificate of Incorporation of NIAGARA LUTHERAN HOME, INC., and they duly acknowledged to me that they executed the same.



John E. Palmer
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1972

The undersigned, a Justice of the Supreme Court of the State of New York, County of Erie, wherein is located the principal office of NIAGARA LUTHERAN HOME, INC., hereby approves the within Certificate of Incorporation of NIAGARA LUTHERAN HOME, INC., and the filing thereof.

DATED: *Feb. 8*, 1972



G.H.C.

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982272

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CERTIFICATE OF INCORPORATION

OF

NIAGARA LUTHERAN HOME, INC.

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2/22

DATED: *July 12th*, 1971

msB

SCHUTRUM, HOWDER,
PALMER & MARTIN
Attorneys and Counselors at Law
43 COURT STREET
BUFFALO, NEW YORK 14202

9

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED APR 18 1972

TAX \$ *None*

FILED FEE \$ *50*

John P. Longo

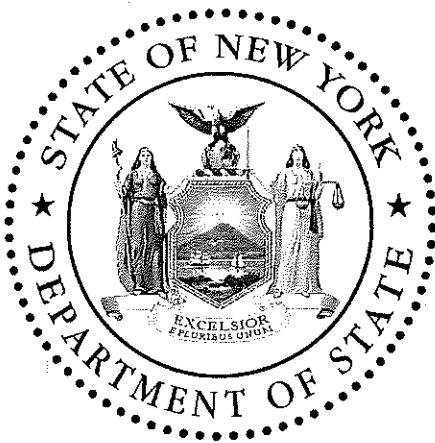
Secretary of State

*P15 Erie
Type B*

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC., File Number 930308000241 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on August 01, 2022.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

930308000241

INFO

INFO

Certificate of Amendment
of the Certificate of Incorporation
of
Niagara Lutheran Home, Inc.
under Section 803 of the Not-for-Profit Corporation Law.

The undersigned, the President and Secretary, respectively, of the Board of Directors of Niagara Lutheran Home, Inc. hereby certify:

1. The name of the corporation is Niagara Lutheran Home, Inc.

2. Its Certificate of Incorporation was filed by the Department of State on April 18, 1972 under the Not-for-Profit Corporation Law.

3. Niagara Lutheran Home, Inc. is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. Niagara Lutheran Home, Inc. is a Type B corporation as defined in Section 201 of the Not-for-Profit Corporation Law and shall continue to be a Type B corporation.

4. The Corporation designates the Secretary of State of the State of New York as the agent of Niagara Lutheran Home, Inc. upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against it served upon him is: 64 Hager Street, Buffalo, New York 14208.

|

5. The Certificate of Incorporation is amended:

(a) To change the corporate name. Paragraph I of the certificate is amended to read:

"The name of the corporation is Niagara Lutheran Home & Rehabilitation Center, Inc. (hereinafter referred to as the "Corporation")."

(b) To change the purpose for which it is formed. Paragraph III of the certificate is amended to read:

The Corporation is affiliated with Lutheran churches of the Niagara Frontier. Its purpose is to own, operate and maintain a skilled nursing facility in a Christian environment, and in connection with the foregoing purpose, to provide other human services, as may be determined possible, for aging people in the Western New York area.

(c) To change paragraph IX. Paragraph IX of the certificate is amended to read:

The Corporation is organized and shall be operated as a non-profit organization, and 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 Articles II and III hereof. No part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Corporation shall receive, or be lawfully entitled to receive, any pecuniary benefits from the operation thereof except as reasonable compensation for services. No Director of the Corporation shall receive any salary, other compensation or pecuniary profit of any kind for services as such Director, other than reimbursement of actual and necessary expenses incurred in the performance of Board duties.

2

Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all liabilities of the Corporation, distribute all of the remaining assets of the Corporation exclusively for the purposes of the Corporation or for a similar public use or purpose, to such Lutheran organization or organizations organized and operated 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 1986, as the same shall then be in force, or the corresponding provisions of any future United States Internal Revenue Law, as the Board of Directors shall determine. In no event shall the assets of this Corporation upon dissolution be distributed to a director, officer, or employee of the Corporation.

The dissolution of this Corporation and any distribution of the assets of this Corporation incident thereto shall be subject to such laws, if any, then in force as may require the approval thereof or consent thereto by any court or judge thereof having jurisdiction or by any governmental or agency or official thereof.

6. The above amendments to the Certificate of Incorporation were authorized and approved by a vote of a majority of all Directors entitled to vote thereon at a meeting of the Board of Directors.

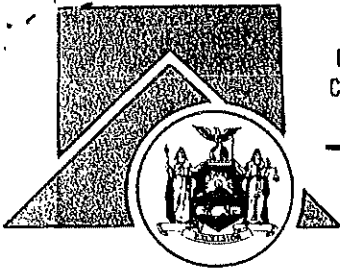
Prior to delivery of this Certificate of Amendment to the Department of State for filing, all required approvals or consents will be endorsed upon or annexed to such Certificate of Amendment.

IN WITNESS WHEREOF, we have signed this certificate this
11th day of August, 1992, and affirm under penalties of perjury
that the statements made herein are true.

Earl A. Schilt
Earl A. Schilt, President

June R. Schillinger
June R. Schillinger, Secretary

4



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

Correction Letter*

January 4, 1993


Mr. Jurgen A. Arndt
Administrator/Executive Director
Niagara Lutheran Home, Inc.
64 Hager Street
Buffalo, NY 14208

Re: Certificate of Amendment of the Certificate of Incorporation
of Niagara Lutheran Home, Inc.

Dear Mr. Arndt:

AFTER INQUIRY and INVESTIGATION and in accordance with
action taken at a meeting of the Public Health Council held on
the 20th day of November, 1992, I hereby certify that the
Certificate of Amendment to the Certificate of Incorporation of
Niagara Lutheran Home, Inc. hereafter to be known as Niagara
Lutheran* Home and Rehabilitation Center, Inc. dated
August 11, 1992 is approved.

Sincerely,


Karen S. Westervelt
Executive Secretary

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Correction*

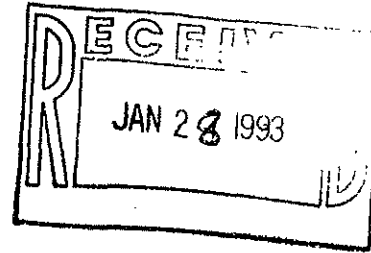
RESOLUTION

RESOLVED, that the Public Health Council, on this 20th day of November, 1992, approves the filing of the Certificate of Amendment to the Certificate of Incorporation of Niagara Lutheran Home, Inc., hereafter to be known as Niagara Lutheran* Home and Rehabilitation Center, Inc. dated August 11, 1992.



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

ROBERT ABRAMS
ATTORNEY GENERAL



(518) 474-5303

January 25, 1993

Robert P. Heary, Esq.
Cohen, Swados, Wright, Hanifin,
Bradford & Brett
70 Niagara Street
Buffalo, New York 14202-3467

Dear Mr. Heary:

RE: OLD: NIAGARA LUTHERAN HOME, INC.
NEW: NIAGARA LUTHERAN HOME & REHABILITATION CENTER, 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.

Very truly yours,

ROBERT ABRAMS
Attorney General

By


RICHARD S. REDLO
Assistant Attorney General

I, MORRY J. ..., a Justice of the Supreme Court of the State of New York for the Eighth Judicial District, do hereby approve the foregoing Certificate of Amendment to the Certificate of Incorporation of Niagara Lutheran Home, Inc.

Date: 12 17 1993

[Signature]
Justice of the Supreme Court of the State of New York for the Eighth Judicial District

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Mar 8 1 13 PM '93

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Certificate of Amendment
of the Certificate of Incorporation
of
Niagara Lutheran Home, Inc.
under Section 803 of the Not-for-Profit Corporation Law.

1-CC
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 08 1993

TITLE: 0

BY: JW

ERIE

COHEN SWADOS WRIGHT HANIFIN BRADFORD & BRETT
COUNSELLORS AT LAW
70 NIAGARA STREET
BUFFALO, NEW YORK

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NMFJ

ERIE

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**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC., File Number 960712000612 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on August 01, 2022.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

E-12

F960712000612

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CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF

NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC.

Under Section 803 of the Not-for Profit Corporation Law

THE UNDERSIGNED, the President and Secretary, respectively, of Niagara Lutheran Home & Rehabilitation Center, Inc. (the "Corporation"), hereby certify as follows:

FIRST: The name of the Corporation is NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC.. The name under which the Corporation was formed is Niagara Lutheran Home, Inc..

SECOND: The Certificate of Incorporation of the Corporation was filed by the Department of State on April 18, 1972 under the Not-for-Profit Corporation Law.

THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. The Corporation is a Type B corporation as defined in Section 201 of the Not-for-Profit Corporation Law and shall hereinafter continue to be a Type B corporation.

FOURTH: The Certificate of Incorporation is hereby amended to add further restrictions on the activities of the Corporation. To reflect such amendment, Article II of the Certificate of Incorporation is hereby amended to read as follows:

"II

The Corporation is not formed for pecuniary profit or financial gain. The Corporation is constituted so as normally to receive a substantial part of its support from governmental units, from direct or indirect contributions from the general public, and

from receipts from sales of services in charitable activities which are not unrelated businesses. No part of the assets, income, profit or net earnings of the Corporation shall be distributable to, or inure to the benefit of, the Corporation's directors or officers or any other private individual. No substantial part of the activities of the Corporation shall be devoted to the carrying on of propaganda, or otherwise attempting, to influence legislation, (except as otherwise provided by Section 501(h) of the Code (as hereafter defined)), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. Notwithstanding any other provision of this certificate, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law) (the "Code"), or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

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

The Corporation is a corporation as defined in subparagraph (a)(5) of the Section 102 (Definitions) of the Not-For-Profit Corporation Law."

FIFTH: The Certificate of Incorporation is hereby amended to change the specified distributees of the assets and property of the Corporation in the event of dissolution of the Corporation. To reflect such amendment, Article IX of the Certificate of Incorporation is hereby amended to read as follows:

"IX

The Corporation is organized and shall be operated as a not-for-profit corporation, and 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 Articles II and III hereof. No part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Corporation 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 Corporation 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/her duties.

In the event of dissolution of the Corporation, all of the assets and property of the Corporation remaining after the payment of the Corporation's liabilities shall be distributed to one or more of the not-for-profit affiliates of the Corporation, provided that the distributee(s) shall then qualify under Section 501(c)(3) of the Code, subject to an order of a Justice of the Supreme Court of the State of New York. If none of the Corporation's not-for-profit affiliates shall so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for religious, charitable, educational or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code, subject to an order of a Justice of the Supreme Court of the State of New York. For purposes of this paragraph, an "affiliate" shall mean any not-for-profit organization that controls, is controlled by, or is under common control with the Corporation, and any other not-for-profit organization which expressly and specifically includes among its purposes the benefit or support of the Corporation."

SIXTH: The Certificate of Incorporation is further amended to add an Article addressing requirements of the Corporation should the Corporation be defined as a private foundation under Section 509 of the Internal Revenue Code of 1986, as amended. To reflect such amendment, an Article XIII is hereby added to the Certificate of Incorporation, which Article XIII shall read as follows:

"XIII

In any taxable year in which the Corporation is a private foundation as defined under Section 509 of the Code, the Corporation shall:

- (a) not engage in any act of self-dealing that is subject to tax under Section 4941 of the Code;

(b) distribute its income for each taxable year at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(c) not retain any excess business holdings in such manner as to subject the Corporation to tax under Section 4943 of the Code;

(d) not make any investments in such a manner as to subject the Corporation to tax under Section 4944 of the Code; and

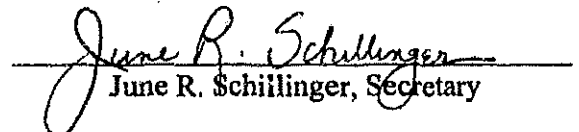
(e) not make any taxable expenditures that are subject to tax under Section 4945 of the Code."

SEVENTH: The foregoing amendments to the Certificate of Incorporation of the Corporation were authorized and approved by a vote of a majority of all Directors entitled to vote thereon at a meeting of the Board of Directors.

EIGHTH: The Corporation designates the Secretary of State of the State of New York as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: Niagara Lutheran Home & Rehabilitation Center, Inc., 64 Hager Street, Buffalo, New York 14208.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment and affirmed under penalties of perjury that the statements made herein are true this 18th day of April, 1996.


Paul R. Mertzlufft, President


June R. Schillinger, Secretary



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

July 5, 1996

Ms. Denise L. Dooley
Corporate Representative
Empire Corporate Services
Four Central Avenue
Albany, New York 12210

Re: Proposed Certificate of Amendment of
Certificate of Incorporation of Niagara Lutheran
Home and Rehabilitation Center, Inc.

Dear Ms. Dooley:

The proposed Certificate of Amendment of Certificate of Incorporation of Niagara Lutheran Home and Rehabilitation Center, Inc., dated April 18, 1996, does not require the formal approval of the Council, since, pursuant to § 804(a)(i) of the Not-for-Profit Corporation Law, the Certificate neither adds, changes or eliminates a purpose, power or provision the inclusion of which requires the Council's approval, nor does it change the name of the Corporation.

Sincerely,

Karen Westervelt
Executive Secretary

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F960712000612

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC.

Under Section 803 of the Not-for Profit Corporation Law

1 CC
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUL 12 1996
TAX S
BY: JAH
Eric

Law Offices

DAMON & MOREY LLP

1000 Cathedral Place
298 Main Street
Buffalo, New York 14202-4096

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BILLED

960712000632

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Exhibit B

Niagara Lutheran Home & Rehabilitation Center, Inc. Bylaws

See attached.

BYLAWS

OF

NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC.

ADOPTED (for corporate reorganization): April 18, 1996

REVISIONS APPROVED BY:

BOARD OF DIRECTORS: November 21, 2001

LUTHERAN SERVICES

IN AMERICA: March 26, 2002

REVISIONS APPROVED BY:

BOARD OF DIRECTORS: September 25, 2003

BOARD OF DIRECTORS: February 21, 2013

BOARD OF DIRECTORS: September 26, 2013

BOARD OF DIRECTORS: October 1, 2015

BOARD OF DIRECTORS: September 9, 2021

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BYLAWS
OF
NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC.

ARTICLE I - DESCRIPTION

Section 1. Name

The name of the Corporation is Niagara Lutheran Home & Rehabilitation Center, Inc. (hereinafter referred to as the "Corporation") The Corporation will be affiliated with the Evangelical Lutheran Church in America and recognized by The Lutheran Church-Missouri Synod, or their successors, and will function in accordance with church body criteria and provisions.

Section 2. Offices

The principal office of the Corporation shall be in the County of Erie, State of New York. The Corporation may also have offices at such other place(s) within and/or without the State of New York as the Board of Directors, as defined in Article III, may from time to time determine or the business of the Corporation may require.

Section 3. Purposes

The purposes of the Corporation shall be as set forth in its Certificate of Incorporation, as amended from time to time.

ARTICLE II - MEMBERSHIP

Section 1. Composition

The sole member of the Corporation shall be Niagara Lutheran Health System, Inc. (hereinafter referred to as "NLHS" or the "Member").

Section 2. Rights of Member

NLHS shall have and exercise all the rights and powers of corporate membership created by the laws of the State of New York or the Certificate of Incorporation or Bylaws of the Corporation.

Section 3. Annual Meeting of Corporation

(a) In its capacity as Member of the Corporation, NLHS shall hold an annual meeting of the Corporation no later than the last day of November of each year at a convenient time and place designated by NLHS. At the annual meeting, NLHS shall elect the Corporation's directors, and transact such other business as may properly come before the meeting.

(b) The Annual Meeting of the Board of Directors of the Corporation shall be held in November of each year at a convenient time and place designated by the Board of Directors of the Corporation.

Section 4. Annual Report to Member

The President and the Treasurer of the Corporation shall present an annual report showing in appropriate detail a summary of the activities of the Corporation during the preceding year.

Section 5. Action by Member

Any action required or permitted to be taken by NLHS in its capacity as the Member of the Corporation under applicable law or the Certificate of Incorporation or these Bylaws shall be taken by NLHS through written consent to such action. The written consent of NLHS shall be given and evidenced by a resolution of the Board of Directors of NLHS, signed by an officer of NLHS, following action by the Board of Directors of NLHS in accordance with NLHS= Certificate of Incorporation, Bylaws, policies and procedures.

ARTICLE III - BOARD OF DIRECTORS

Section 1. Authority

All of the affairs, property, business and policies of the Corporation shall be under the charge, control and direction of the Board of Directors. Persons serving as a member of the Board of Directors, sometimes referred to as the "Board", are herein referred to individually as a "Director" and collectively as the "directors." The Corporation shall be fully responsible for its own management and fiscal affairs and church affiliation/recognition shall not cause any ministry partner to incur or be subject to the Corporation's liabilities or debts (including any bond or loan prospectus).

Section 2. Composition

(a) The Board of Directors shall be comprised of not less than three (3) nor more than seven (7) directors, one of whom shall be ex officio, the President of the Corporation. The number of Directors at any time shall be determined by the Member, provided that no decrease in the number of Directors shall shorten the term of any incumbent Director. The membership of the Board shall represent a variety of interests and shall be chosen for their ability and willingness to contribute in various ways to the success of the Corporation. At least 51% of the members of the Board shall be members of Lutheran congregations.

(b) At least 51% of the seats on the Board of the Corporation shall be filled at any time by individuals who are not concurrently directors or officers of NLHS. or any of its Affiliates.

Section 3. Election and Term of Directors

(a) All elections shall be by ballot and a majority of all votes cast shall be necessary to elect.

(b) Upon the initial approval of these bylaws, the elected directors shall be divided into three (3) classes of approximately equal size by the Board: one class shall be elected to serve a term of one (1) year, a second class shall be elected to serve a term of two (2) years, and a third class shall be elected to serve a term of three (3) years. Thereafter, directors who are members of such classes shall be elected at the annual meeting of the Corporation on a rotating basis. All directors who are members of a class elected at an annual meeting after the 1996 annual meeting shall succeed the incumbent directors whose terms of office expire that year and shall be elected to serve a term of three (3) years and until their successors are duly elected and qualified, except that a director may be elected for a term of less than three years if necessary for the purpose of maintaining approximately equal class sizes.

(c) The Nominating Committee shall select all nominees to the Board of Directors. Lutheran nominees who are members of the ELCA or LC-MS shall have their names submitted to their respective judicatories, namely the Upstate New York Synod, ELCA, and the Eastern District, LC-MS, or their successors, "Judicatories", for approval. Following approval of the stated Judicatories, nominees shall be submitted for election at the annual meeting of the System. The Lutheran members of the Board shall be selected from both the ELCA and LC-MS Judicatories and other Lutheran bodies within the service area of the System and shall include at least two (2) members that are Ministers, as defined herein. "Ministers" shall mean Rostered Ministers, as defined by the ELCA; Ordained Ministers and Commissioned Ministers, as defined by the LC-MS, and the equivalent of such persons in other Lutheran bodies within the service area of the System. Non ELCA and LC-MS Lutheran nominees along with non Lutheran nominees shall be submitted by the Nominating Committee directly to the Board for election.

(d) Newly elected directors shall take office on the first day of January following their election at the annual meeting.

Section 4. Removal

(a) Any elected director may be removed from office, with or without cause, by an affirmative vote of a majority of the entire Board of the Member at any regular or special meeting of the Board, provided that the proposed action is referenced in the notice of the meeting.

(b) An ex officio director who shall cease for any reason to hold the office from which his or her directorship in the Corporation is derived shall automatically and immediately be removed from the Board of the Corporation.

Section 5. Resignation

(a) An elected director may resign at any time by giving written notice to the Chair or the Secretary of the Corporation and to the Member. Unless otherwise specified in the notice, the resignation shall take effect upon delivery thereof to such officer of this Corporation and the acceptance of the resignation shall not be necessary to make it effective.

(b) An ex officio director may resign his or her directorship in the Corporation only by resigning from or otherwise discontinuing service in the office from which the directorship in this Corporation is derived.

Section 6. Vacancies and Newly Created Directorships

(a) Each vacancy in elected seats on the Board for any reason shall be filled by vote of the Member. The Member's Nominating Committee of the Board shall submit to the Board of the Member its nomination to fill the vacancy. The Member shall not be obligated to elect any such nominee.

(b) An elected director who fills a vacancy shall hold office until the next annual meeting of the Corporation and until his or her successor is duly elected and qualified.

(c) A vacancy in the ex officio directorship shall automatically and immediately be filled by the successor in the office from which the directorship is derived.

(d) Newly created directorships shall be filled in the manner prescribed for those directorships at the time they are created.

Section 7. Regular Meetings of the Board

The Board of Directors shall hold regular meetings of the Board at least four (4) times each year as designated by the Board. The Annual Meeting in November at which election of the directors and officers takes place shall be counted among the required four (4) meetings. Written notice of all regular meetings shall be mailed to each director not less than ten (10) days in advance of the date fixed for such meeting.

Section 8. Special Meetings of the Board

Special meetings of the Board may be called at any time by the Chair or President and shall be called by the Chair or the Secretary within fourteen (14) days after receipt of a written request from any three (3) directors. Notice of each special meeting shall be given in person, by telephone, email or by mail to each director at least three (3) days in advance of the date of such special meeting. The notice shall state the business for which the special meeting has been called, and no business other than that stated in the notice shall be transacted at the special meeting.

Section 9. Waiver of Notice

Notice of any meeting of the Board need not be given to any director who submits a waiver of notice before or after the meeting, or who attends the meeting without protesting prior thereto or at its commencement the lack of notice to him or her.

Section 10. Place of Board Meetings

The Board may hold its meetings at the office of the Corporation or at such other places within the State of New York as it may from time to time determine.

Section 11. Quorum of Directors

(a) The presence in person of one-third (1/3) of the entire Board shall be necessary to constitute a quorum at all meetings of the Board for the transaction of business, except as otherwise required by law or the Corporation's Certificate of Incorporation or these Bylaws.

(b) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place without notice other than announcement at the meeting.

Section 12. Action by the Board

(a) Each director shall be entitled to one (1) vote on each matter properly submitted to the directors for action at any meeting of the Board. Unless otherwise required by law or provided in the Corporation's Certificate of Incorporation or these Bylaws, the vote of a majority of directors present at the time of the vote at a duly convened meeting, provided that a quorum is then present, shall be the act of the Board.

(b) 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 thereof consent in writing to the adoption of a resolution authorizing the action. The resolution and written consent thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

(c) Any one (1) or more members of the Board, or of any committee thereof, may participate in a meeting of such Board or committee by means of a conference telephone or similar equipment that allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at such a meeting.

Section 13. Minutes

The Secretary or a designee shall maintain complete and accurate minutes of each Board and committee meeting and shall retain each notice sent and each resolution and unanimous written consent of the directors. Said documents shall accurately reflect all business conducted, including findings, conclusions and recommendations, and shall be maintained in the permanent records of the Corporation. A copy of all such minutes shall be transmitted promptly to the Member.

Section 14. Attendance at Meetings

Attendance at each meeting of the Board and the Corporation's committees shall be recorded by the Secretary in the minutes thereof. Absence from a meeting of the Board or a committee to which a director is appointed may be excused for good cause shown. Unexcused absence from any three (3) consecutive regular or special meetings of the Board or three (3) consecutive meetings of any committee during a twelve (12) month period for any reason shall constitute cause for removal from the Board.

Section 15. Compensation of Directors

Except for the President of the Corporation who shall be a director of the Corporation on an ex officio basis, no director of the Corporation shall receive, directly or indirectly, any salary, compensation or emolument from the Corporation in the role of director, but directors shall be reimbursed for reasonable expenses incurred in the performance of Corporation duties. Nothing herein contained shall be construed to preclude any director from serving the Corporation in another capacity and receiving compensation therefor.

Section 16. Property Rights of Directors

No director of the Corporation shall, by reason of that position, have any rights to or interest in the property or assets of the Corporation.

ARTICLE IV - OFFICERS

Section 1. Designation and Election of Officers

(a) The officers of the Corporation shall be a Chair, President, a Treasurer, a Secretary and such other officers as the Board of Directors may deem necessary or advisable.

(b) At the annual Board meeting held in November of each year, the Chair, President, Treasurer and Secretary of the Board (hereinafter, the "elected officers") shall be elected by the Board of Directors. Newly elected officers shall take office on the first day of January following election at the annual meeting in November. Except when such an officer dies, is removed, resigns, becomes disabled, or when a new position is created, newly elected officers shall succeed the incumbent officers whose terms of office expire that year and hold office for a period of one (1) year and until their successors shall have been duly elected and qualified. There shall be no limit on the number of consecutive terms such officers may serve.

(c) The Chair of the Corporation shall be elected from among the directors of the Corporation.

(d) Any elected officer may be removed by the Board of Directors, with or without cause, at any time.

(e) Any elected officer may resign at any time by giving written notice to the Chair or Secretary of the Corporation. Such resignation shall be effective upon delivery to such officer or on such other date specified in the notice, and acceptance of the resignation shall not be necessary to make it effective.

(f) A vacancy in an elected office prior to the scheduled expiration of its term may be filled at any regular or special meeting of the Board. An individual elected to fill a vacancy occurring in any such office for any reason shall serve the remainder of the term and until his or her successor shall have been duly elected and qualified. Vacancies in other offices shall be filled as determined by the Board.

(g) Except for the offices of Chair and President, any officer may hold two (2) or more offices.

Section 2. Chair

The Chair shall preside at all meetings of the Board of Directors and shall appoint committee members and chairs, subject to approval of the Board. The Chair shall be, ex officio, a voting member of all committees.

Section 3. President/Chief Executive Officer

The Board shall appoint a competent and experienced executive to be the President of the Corporation, after consultation with a duly appointed search committee. The President shall be the chief executive officer of the Corporation, shall oversee its general management, shall carry out the policies of the Board and its committees, and shall undertake all the responsibilities assigned by the Chair or the Board. The President shall be, ex officio, a director of the Board and a voting member of all committees and shall undertake such other duties as may be prescribed in these Bylaws or assigned by the Board.

Section 4. Treasurer

The Treasurer shall be the Chair of the Finance Committee. The Treasurer shall be responsible for:

(a) maintaining custody of all funds and securities of the Corporation and managing and controlling the same under the supervision of the Board;

(b) maintaining the Corporation's accounting system in such a manner as to give a true and accurate accounting of the financial transactions and condition of the Corporation;

(c) depositing all money and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Board;

(d) disbursing the funds of the Corporation as may be ordered or authorized by the Board and preserving proper vouchers for such disbursements;

(e) rendering to the Member and to the Chair and the Board at the regular meetings of the Board, or whenever they require it, such financial statements or instruments as they may require concerning the financial transactions or condition of the Corporation;

(f) presenting a complete audited financial report including but not limited to a report concerning the assets received by the Corporation for specific purposes and the use made of such assets and of the income therefrom;

(g) signing and countersigning such instruments as require the Treasurer's signature; and

(h) performing such other duties as are incidental to the office or are assigned to the Treasurer by the Board or the Chair or are prescribed in these Bylaws.

Section 5. Secretary

The Secretary shall be responsible for:

(a) issuing appropriate notices and preparing agendas for all meetings of the Board;

(b) maintaining all records and reports of the Corporation;

(c) keeping and reporting of complete and accurate minutes of all meetings of the Board and committees and all unanimous written consents executed by directors;

(d) keeping the seal of the Corporation and affixing it to documents when authorized in accordance with these Bylaws; and

(e) performing such other duties as are incidental to the office or are assigned to the Secretary by the Board or the Chair or are prescribed in these Bylaws.

ARTICLE V - COMMITTEES

Section 1. Creation and Appointment of Committees

(a) In addition to any Committees specifically described in these Bylaws, the Board of Directors may create standing committees and/or special committees.

(i) Standing committees shall be appointed to fulfill continuous or regularly recurring functions of the Board. Members of the standing committees shall serve for a term of one (1) year and until their successors are elected and qualified.

(ii) Special committees shall be created to fulfill special tasks as circumstances warrant, shall limit their activities to the accomplishment of the tasks for which they are formed, and shall stand discharged upon the completion of such tasks.

(b) Each committee shall have at least three (3) members.

(c) The members of each committee shall be appointed by the Chair of the Board in consultation with the President. Except as otherwise provided, committee members need not be directors. Committee members may be removed by the Chair with or without cause at any time, and vacancies may be filled by the Chair at any time. Committee members appointed to fill vacancies shall serve until removed or until their successors are appointed and qualified.

(d) The chair of each committee shall be appointed by the Chair of the Board in consultation with the President from among the committee members.

Section 2. Standing Committees

There shall be the following standing committees to be appointed by the Chair in consultation with the President: Buildings and Grounds, Bylaws, Finance, Long Range Planning, Medical Advisory, Medical Ethics, Pastoral Care and Personnel.

Section 3. Buildings and Grounds Committee

The Buildings and Grounds Committee shall consist of three (3) or more persons, at least one (1) of whom shall be a member of the Board of the Corporation. It shall serve as an advisory committee to the administrators and the staff and shall help in the formation of programs and policies concerning the construction, upkeep and protection of the buildings, equipment and property of the Corporation.

Section 4. Bylaws Committee

The Bylaws Committee shall review the bylaws of the Corporation at least annually and recommend to the Board any revisions it deems necessary to assure compliance with applicable law and regulations. The Bylaws Committee shall consist of three (3) or more persons, at least one (1)) of whom shall be a member of the Board of the Corporation. Any amendment of the Bylaws resulting from the recommendations of the Committee shall be approved in accordance with Article XI.

Section 5. The Finance Committee

The Finance Committee shall consist of three (3) or more persons, at least one (1) of whom shall be a member of the Board of the Corporation. One of the three Board members shall be the Treasurer, who shall be the Chair of the committee. It shall have responsibility for all accounts of the Corporation. It shall formulate financial policy for the Corporation and present reports of the Finance Committee meetings to the Board. It shall present the financial statements, the annual budget and financial plans, as prepared by the administrative staff of the Corporation, to the Board for appropriate action. It shall arrange for the required annual audit.

Section 6. Long Range Planning Committee

The Long-Range Planning Committee shall consist of three (3) or more persons, at least one (1) of whom shall be a member of the Board of the Corporation. It shall establish and maintain an ongoing five (5) year plan for the future ministry of the Corporation. It shall also be responsible for developing and maintaining relationships within the Lutheran community.

Section 7. Medical Advisory Committee

The Medical Advisory Committee shall consist of three (3) or more members, whose duties it shall be to develop the medical policies, medical service and admission procedures of the Corporation. This committee shall be responsible to comply with all duties as required by the codes and regulations of New York State and the Federal Government. It shall submit a list of qualified medical staff members to the Board annually for their approval. The Board shall have a representation on the committee.

Section 8. Medical Ethics Committee

The Ethics Committee shall consist of three (3) or more persons. The purposes of the Committee shall be:

- (a) To work with the facility staff in the establishment of working Ethic Subcommittees within the facility.
- (b) To educate themselves on moral/ethical medical issues and to disseminate that knowledge to the Facility Ethics Committees.
- (c) To provide a liaison between the Facility Ethics Committees and the Board.

- (d) To assure that the moral/ethical medical decisions made by the facilities are in keeping with Lutheran Church Doctrine, the bylaws of the facility and the philosophy and mission of the Home.
- (e) The committee can be convened to review issues that cannot meet final resolution at the facility level.

The committee will meet at least bi-annually.

Section 9. Pastoral Care Committee

The Pastoral Care Committee shall consist of three (3) or more persons. It shall serve as an advisory committee to the administrator and staff and shall help in the formation of programs and policies for the spiritual and emotional needs of the patients.

Section 10. Personnel Committee

The Personnel Committee shall consist of three (3) or more persons, at least one (1) of whom shall be a member of the Board of the Corporation. It shall recommend to the Board policies in regard to salaries and employee benefits. It shall serve as an advisory committee to the administrator and staff and shall help in the formation of programs and policies in regard to personnel salaries and benefits. Recommendations relative to salaries and employee benefits shall be submitted to the Board for approval.

Section 11. Committee Meetings

(a) Each committee shall meet with such minimum frequency as is prescribed by the Board, and at such additional times as the committee chair may determine. Unless otherwise specific, a majority of the committee members shall be considered a quorum, and a vote by a majority of the members present at a duly organized committee meeting shall be the act of the committee. A committee may meet by conference telephone in the same manner as the full Board, see article III §12 of Bylaws, and may act by unanimous written consent in lieu of a majority vote at a meeting. Each committee shall submit minutes of its proceedings to the Secretary of the Corporation.

(b) A committee may also meet by electronic correspondence (emails and similar methods) where necessary due to time constraint. Participation by such means shall constitute presence in person at such meeting.

ARTICLE VI - ADMINISTRATOR

The Board shall employ and have the authority to dismiss the administrator who shall have the executive responsibility for management of the facility. He/she shall have the authority to appoint employees to fill staff positions created by the Board and to dismiss employees when their services are no longer needed or become unsatisfactory. He/she shall make regular reports to the Board concerning the work of the Corporation.

ARTICLE VII - INDEMNIFICATION AND INSURANCE

Section 1. Indemnification.

(a) The Corporation shall indemnify each person made or threatened to be made a party to any action or proceeding, whether civil or criminal, by reason of the fact that such person or such person's testator or intestate is or was Director, Officer, or committee member of the Corporation, or, while a Director, Officer or committee member serves or served, at the request of the Corporation, any other Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, penalties, amounts paid in settlement and reasonable expenses, including attorneys' fees, incurred in connection with such action or proceeding, or any appeal therein, provided that no such indemnification shall be made if a judgment or other final adjudication adverse to such person establishes that his or her 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, and provided further that no such indemnification shall be required with respect to any settlement or other non-adjudicated disposition of any threatened or pending action or

proceeding unless the Corporation has given its prior consent to such settlement or other disposition.

(b) The Corporation shall advance or promptly reimburse upon request any Director, Officer or committee member seeking indemnification hereunder for all expenses, including attorneys' fees, reasonably incurred in defending any action or proceeding in advance of the final disposition thereof upon receipt of an undertaking by or on behalf of such person to repay such amount if such person is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent the expenses so advanced or reimbursed exceed the amount to which such person is entitled.

(c) This Article shall be given retroactive effect and the full benefits hereof shall be available in respect of any alleged or actual occurrences, acts, or failures to act prior to the date of the adoption of this Article. The right to indemnification or advancement of expenses under this Article shall be a contract right.

Section 2. Insurance.

The Corporation shall purchase liability insurance for its Directors, Officers and committee members on terms authorized and approved by the Board of Directors.

ARTICLE VIII - FISCAL YEAR

The fiscal year of the Corporation shall be the calendar year.

ARTICLE IX - CONFLICT OF INTEREST

Section 1. Reporting Requirement

Any director, officer or committee member having an existing or potential interest in a contract or other transaction presented to the Board of Directors or a committee thereof for deliberation, authorization, approval, or ratification, or any such person who reasonably believes such an interest exists in another such person, shall make a prompt, full and frank disclosure of the interest to the Board or committee prior to its acting on such contract or transaction which might reasonably be construed to be adverse to the Corporation's interest.

Section 2. Conflict Determination and Restrictions

The body to which such disclosure is made shall determine, by majority vote, whether the disclosure shows that the nonvoting and non-participation provisions below must be observed. If so, such person shall not vote on, nor use his or her personal influence on, nor participate (other than to present factual information or to respond to questions) in the discussions or deliberations with respect to, such contract or transaction. Such interested person may not be counted in determining the existence of a quorum at any meeting where the contract or transaction is under discussion or is being voted upon. The minutes of the meeting shall reflect the disclosure made, the vote thereon and, where applicable, the abstention from voting and participation, and whether a quorum was present.

Section 3. Conflict Policies

The Board shall adopt conflict of interest policies requiring:

- (a) regular annual statements from directors, officers, and key employees that disclose existing and potential conflicts of interest.
- (b) corrective and disciplinary action with respect to transgressions of such policies.

For the purposes of this Section, a person shall be deemed to have an “interest” in a contract or other transaction if the person is the party (or one of the parties) contracting or dealing with the Corporation, or if the person is a director, trustee or officer of, or has a significant financial or influential interest in, the entity contracting or dealing with the Corporation, or if the person is otherwise reasonably likely to gain a significant financial or other personal benefit if the contract or transaction is approved. Concurrent service on the Board of Directors of this Corporation and the Board of Directors of an Affiliate or the Member shall not be a disqualifying conflict of interest for the purposes of this Article.

Section 4. Effect on Contracts and Other Decisions

No contract or other transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, firm, association or other entity in which one or more the Corporation’s directors or officers are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such director(s) or officers are present at the meeting of the Board, or of a committee thereof, which authorizes such contract or transaction, or that his or their votes are counted for such purpose, if the material facts as to such director’s or officer’s interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the Board or committee, and the Board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote or votes of such interested director or officer.

ARTICLE X - DISSOLUTION

Dissolution of the Corporation shall take place upon a two-thirds (2/3) vote of the Board present at a specially called meeting held at least sixty (60) days after written notice of the meeting has been given in the same manner as for the annual meetings.

In the event of dissolution of the Corporation, all of the assets and property of the Corporation remaining after payment of the Corporation's liabilities shall be distributed to Niagara Lutheran Health System or one or more of the not-for-profit Affiliates of the Corporation, provided that the distributee(s) shall then qualify under Section 501(c)(3) of the Code, subject to an order of the Supreme Court of the State of New York. If none of the Corporation's not-for-profit Affiliates or the Member shall so qualify at the time of dissolution, then distribution shall be made to other recognized Lutheran social ministry organizations, as approved by the Board of Directors, provided that they qualify under Section 501(c)(3) of the Code, subject to an order of a Justice of the Supreme Court of the State of New York.

ARTICLE XI - RULES OF ORDER AND BYLAW CHANGES

Section 1. Rules of Order

Meetings of the Board shall be governed by Robert's Rules of Order, except where they are inconsistent with the provisions of these Bylaws or applicable New York laws.

Section 2. Bylaw Changes

These Bylaws may be amended, repealed or adopted by an affirmative vote of two-thirds (2/3) of the entire Board of Directors subject to prior review of the Member at any regular or special meeting of the Board or upon the directors unanimous written consent, provided that notice of the proposed amendment shall be given to the Board and the Member sixty (60) days prior to the adoption. Any proposed changes to the governing documents related to the requirements for affiliation and/or recognition will be submitted to the ELCA Division for Church in Society and the LC-MS Board for Human Care Ministries, or their successors, for their opinion on how the proposed changes may affect the affiliation/recognition status of the Corporation.

Adopted by resolution of the Board of Directors of the Corporation on the _____
day of _____, 2015.

Secretary

139535 5/31/96 - Damon & Morey

Rev. at NLHS 9/11/01 - jrs

Rev. at NLHRC 9/25/03 - jrs

Rev. at NLHRC 2/21/13 - ns

Rev. at NLHRC 9/26/13 - ns

Rev. at NLHRC 10/01/15 - ns

Rev. at NLHRC 09/09/21- Candyce Ingwersen, Esq. and dc

Exhibit C

Plan of Dissolution

See attached.

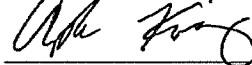
**PLAN OF DISSOLUTION
OF
NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC.**

Under Section 1002 of the Not-for-Profit Corporation Law

The Board of Directors (the "Board") of **NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC.**, (the "Corporation"), has considered the advisability of voluntarily dissolving the Corporation and has determined that dissolution is in the best interest of the Corporation. The Board directs that the Corporation be dissolved in accordance with the following plan:

1. The Board has adopted this Plan of Dissolution and has submitted this Plan to Niagara Lutheran Health System, Inc., the Corporation's sole member, for approval.
2. In addition to Attorney General approval, Public Health and Health Planning Council approval of the Plan is required and a copy of the approval will be attached to the Verified Petition submitted to the Attorney General.
3. The Corporation is a charitable corporation and has no assets or liabilities.
4. A Certificate of Dissolution shall be signed by an authorized director or officer of the Corporation and all required approvals shall be attached thereto.

Niagara Lutheran Home & Rehabilitation Center, Inc.



Christopher Koenig,
President/Chief Executive Officer

August 11, 2022

(Date)

Exhibit D

Certificate of Dissolution

See attached.

**CERTIFICATE OF DISSOLUTION
OF
NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC.**

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

I, Rev. Paul Mertzlufft, the Board Chair of Niagara Lutheran Home & Rehabilitation Center, Inc., hereby certify as follows:

FIRST: The name of the corporation is Niagara Lutheran Home & Rehabilitation Center, Inc. (the "Corporation"). The Corporation was originally formed under the name Niagara Lutheran Home, Inc.

SECOND: The Corporation's Certificate of Incorporation was filed with the New York State Department of State on the 18th day of April, 1972.

THIRD: The names and addresses of each of the officers and directors of the Corporation and the title of each are as follows:

<u>Name</u>	<u>Director/Officer Title</u>	<u>Address</u>
Rev. Paul Mertzlufft	Board Chair	4162 Walker Place Hamburg, NY 14075
Christopher Koenig	Director, President/Chief Executive Officer	9245 Hunt Club Lane Clarence, NY 14031
Dr. Thomas Kuhn	Director	80 Westport Court Buffalo, NY 14221
Rev. Thomas Mason	Director	245 S. 2nd Street Lewiston, NY 14092

FOURTH: At the time of dissolution, the Corporation is a charitable New York not-for-profit corporation.

FIFTH: At the time of the authorization of the Corporation's Plan of Dissolution pursuant to Section 1002 of the Not-for-Profit Corporation Law, the Corporation held no assets legally required to be used for a particular purpose.

SIXTH: The Corporation elects to dissolve.

SEVENTH: The dissolution was authorized by unanimous written consent of the Board of Directors, followed by consent of the sole corporate member.

EIGHTH: The Corporation is a charitable corporation with no assets to distribute. Prior to the delivery of this Certificate of Dissolution to the Department of State for filing, a copy of the Plan of

Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law has been duly filed with the Attorney General.

NINTH: The dissolution of the Corporation requires the approval of the Attorney General and the Public Health and Health Planning Council, and such approvals are annexed hereto or endorsed hereon. No approval of the dissolution of the Corporation by any other government body or officer is required.

TENTH: The Corporation has carried out the Plan of Dissolution.

ELEVENTH: Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be stamped below.

[signature page follows]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of the Corporation this ____ day of _____, 20____.

Rev. Paul Mertzlufft, Board Chair

**CERTIFICATE OF DISSOLUTION
OF
NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC.**

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

Filed By:

**BARCLAY DAMON LLP
200 Delaware Avenue, Suite 1200
Buffalo, New York 14202**

Exhibit E

Unanimous Written Consent of the Board

See attached.

**UNANIMOUS WRITTEN CONSENT
OF THE
BOARD OF DIRECTORS
OF
NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC.**

THE UNDERSIGNED, constituting all of the members of the Board of Directors (the "Board") of NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC., a New York not-for-profit corporation (the "Corporation"), do hereby adopt, consent to, confirm, approve and ratify the following resolutions in lieu of a meeting of the Board of Directors pursuant to Section 708(b) of the New York State Not-for-Profit Corporation Law:

WHEREAS, Niagara Lutheran Health System, Inc. ("NLHS") is the sole corporate member of the Corporation; and

WHEREAS, the Corporation has no assets or liabilities; and

WHEREAS, the Corporation has no intention of resuming operations; and

WHEREAS, the Corporation desires to dissolve.

NOW, THEREFORE, be it:

RESOLVED, that the Board hereby authorizes and directs that Corporation be dissolved in accordance with the Plan of Dissolution (**Attachment A**), the Corporation's Certificate of Incorporation, its bylaws, and the New York Not-for-Profit Corporation Law; and be it further

RESOLVED, that the Plan of Dissolution is hereby adopted; and be it further

RESOLVED, that these Resolutions, the Plan of Dissolution, and the proposed voluntary dissolution of the Corporation are hereby proposed and recommended to NLHS for adoption as the sole member of the Corporation; and be it further


RESOLVED, that upon obtaining adoption, authorization, and approval from NLHS, the President/Chief Executive Officer (an "Authorized Officer") is authorized to take any and all such actions that such Authorized Officer deems necessary, appropriate or advisable to effect the dissolution, including, without limitation, preparing and submitting any and all governmental, regulatory, judicial and/or third party filings necessary to obtain consents or approvals required to consummate the dissolution, including filing with the New York Secretary of State a Certificate of Dissolution; and be it further

RESOLVED, that this Written Consent may be executed in counterparts.

The undersigned directors have executed this Consent as of August 11, 2022.



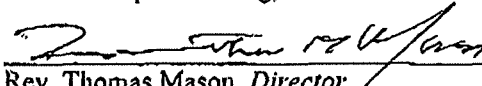
Rev. Paul Mertzlufft, Board Chair



Dr. Thomas Kuhn, Director



Mr. Christopher Koenig, Director



Rev. Thomas Mason, Director

Exhibit F

NLHS Consent as Sole Member

See attached.

**CONSENT OF NIAGARA LUTHERAN HEALTH SYSTEM, INC.
TO APPROVE THE DISSOLUTION OF
NIAGARA LUTHERAN HOME & REHABILITATION CENTER, INC.**

NIAGARA LUTHERAN HEALTH SYSTEM, INC., a New York not-for-profit corporation (the "Member"), being the sole member of Niagara Lutheran Home & Rehabilitation Center, Inc. ("the Corporation") does hereby adopt, consent to, confirm, approve and ratify the following resolutions:

WHEREAS, the Corporation has no assets or liabilities; and

WHEREAS, the Corporation has no intention of resuming operations; and

WHEREAS, the Corporation desires to dissolve; and

WHEREAS, the Member Board of Directors has determined that dissolution is in the best interest of the Corporation; and

WHEREAS, the Member Board duly authorized the Corporation's dissolution ; and

WHEREAS, the Member Board Chair is authorized to take any and all such actions on behalf of the Member that the Chair deems necessary, appropriate or advisable to effect the dissolution; and

WHEREAS, the Member Board Chair has reviewed the Corporation's Plan of Dissolution.

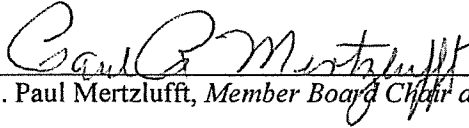
NOW, THEREFORE, be it:

RESOLVED, that the Member hereby adopts, authorizes, and approves the dissolution of the Corporation in accordance with the Plan of Dissolution (**Attachment A**), the Corporation's Certificate of Incorporation, its bylaws, and the New York Not-for-Profit Corporation Law; and be it further

RESOLVED, that the Plan of Dissolution is hereby adopted; and be it further

RESOLVED, that the Corporation's President/Chief Executive Officer (an "Authorized Officer") is authorized to take any and all such actions that such Authorized Officer deems necessary, appropriate or advisable to effect the dissolution, including, without limitation, preparing and submitting any and all governmental, regulatory, judicial and/or third party filings necessary to obtain consents or approvals required to consummate the dissolution, including filing with the New York Secretary of State a Certificate of Dissolution.

Niagara Lutheran Health System, Inc.



Rev. Paul Mertzlufft, *Member Board Chair as Sole Member*

August 12, 2022

(Date)

Exhibit G

Final Financial Report to Charities Bureau

See attached.

**CHAR500
Online**For new annual filings,
and amendments**Annual Filing for Charitable Organizations**New York State Office of the Attorney General
Charities Bureau - Registration Section
28 Liberty Street
New York, NY 10005
charitiesnys.com**Open to Public
Inspection**

Filing Type:

 New Filing AmendmentFiling Year: 2020**General Information**

Current Organization Name: NIAGARA LUTHERAN HOME AND REHABILITATION CENTER INC Updated Name: N/A
 NY Registration Number: 02-04-58 Registration Category: 7A
 Organization Type: Corporation EIN: 160798517
 Current Fiscal Year End: 12/31 Updated Fiscal Year End: N/A
 Organization Email: kmuir@niagaralutheran.org Organization's Phone: 7166840202
 Tax Exempt Status: 501(c)(3) Website: www.niagaralutheran.org

Organization Address

Mailing Address	Principal Address	NY State Address
5959 Broadway Street Lancaster NY 14086 United States	5959 Broadway Street Lancaster NY 14086 United States	NA

Primary Contact Information

First Name: Kathleen Last Name: Muir Title: Controller
 Phone: 7166840202 Email: kmuir@niagaralutheran.org

Third Party Preparer Information

First Name: N/A Last Name: N/A Title: N/A
 Firm Name: N/A Phone: N/A Email: N/A

Third Party Address

Street: N/A
 City: N/A State: N/A
 Zip: N/A Country: N/A

Registration Category

1. Does the organization conduct activity in New York State (other than soliciting) ? This may include, but is not limited to, maintaining an office, having employees or running a program.
 Yes No
2. Does the organization have assets in New York State?
 Yes No
3. Is the organization incorporated or formed in New York State?
 Yes No N/A
4. Does the organization solicit or receive more than \$25,000 annually in total contributions from New York State residents, foundations, corporations, or government agencies?
 Yes No
5. Does the organization use a professional fundraiser or fundraising counsel?
 Yes No

Based on your responses to the above questions, this organization's registration category has been updated to EPTL

The updated registration category will go into effect when your filing has been processed.

Exemption Qualifications

1. Is the organization a government agency, controlled by a government agency, or the U.S. Congress or New York State Legislature?
 Yes No N/A
2. Was the organization formed for religious purposes?
 Yes No N/A
3. Is the organization a PTA affiliated with an educational institution subject to the jurisdiction of the New York State Education Department?
 Yes No N/A
4. Is the organization a library that files annual financial reports with the New York State Department of Education?
 Yes No N/A
5. Does the organization receive substantially all of its contributions from a single government agency to which it submits annual financial reports?
 Yes No N/A
6. Is the organization's gross contributions from all other New York sources \$25,000 or less and it will remain below that?
 Yes No N/A
7. Does the organization receive funding from a federated fund, United Way, or incorporated community appeal?
 Yes No N/A
8. Is the organization's gross contributions from all other sources \$25,000 or less and will remain below that?
 Yes No N/A
9. Does the organization use or plan to use a professional fundraiser?
 Yes No N/A
10. Is the organization an educational institution or museum that files annual financial reports with the Board of Regents of the University of the State of New York or an agency with similar responsibilities in another state?
 Yes No N/A
11. If the organization is an educational institution, does it limit solicitation of contributions to the student body, alumni, faculty, trustees and their families?
 Yes No N/A

12. Is the organization incorporated/chartered under the New York State Education Law?
 Yes No N/A
13. Is the organization a law enforcement support organization that only solicit contributions from its members?
 Yes No N/A
14. Is organization a New York State volunteer firefighters or volunteer ambulance corps?
 Yes No N/A
15. Is the organization a hospital, skilled nursing facility, or diagnostic/treatment center?
 Yes No N/A
16. Is organization a veterans' organization, volunteer firefighters, volunteer ambulance corps, or an auxiliary of such organization whose fundraising is performed only by its members without direct or indirect compensation?
 Yes No N/A
17. Is the organization a historical society chartered by the Board of Regents of the University of the State of New York that solicits contributions only from its memberships?
 Yes No N/A
18. Is the organization a historical society chartered by the Board of Regents of the University of the State of New York?
 Yes No N/A
19. Is the organization a membership organization?
 Yes No N/A
20. Is the organization a membership organization that solicits contributions only from its members?
 Yes No N/A
21. Is organization a cemetery corporation subject to Article 15 of the New York State Not-for-Profit Corporation Law?
 Yes No N/A
22. Is the organization incorporated under Article 43 of the New York State Insurance Law?
 Yes No N/A
23. Is the organization a police department, sheriff's department or other government law enforcement agency?
 Yes No N/A

Based on your responses to the exemption questions, this organization's registration category has been updated to EPTL. The updated registration category will go into effect when your filing has been processed.

Annual Exemptions

1. Were the total contributions from New York State, including residents, foundations, government agencies, etc. under \$25,000 during the fiscal year?
 Yes No N/A
2. Did the organization use a professional fundraiser or fundraising counsel during the fiscal year?
 Yes No N/A
3. Were the organization's gross receipts under \$25,000 and the market value of its assets under \$25,000 during the fiscal year?
 Yes No

Based on your responses to annual exemption questions, this organization is required to file under EPTL during this fiscal year.

Financial Information

Which IRS form does your organization use? IRS990 Organization's total revenue: 52,500

Organization's total contributions: 0 Organization's total assets: N/A

Organization's net assets: 0 Organization's total revenue and contributions: N/A

Organization's total liabilities: N/A Organization's total assets/worth: N/A

Organization's total income: N/A

Is the organization required to file form Schedule B - Schedule of contributors - with the IRS?

Yes No N/A

For the current filing year, have your organization plan to complete any of the following with its Charities Registration?

Closing Withdrawing Dissolving None

Is this your final filing with New York State? Yes No N/A

Filing Information

Did the organization use a professional fundraiser or fundraising counsel to solicit contributions in New York State?

Yes No

General Information	Description of Services	Description of Compensation
Name of Firm: <u>N/A</u> Type: <u>N/A</u> Reg Number: <u>N/A</u> Contract Start: <u>N/A</u> Contract End: <u>N/A</u> Amount Paid: <u>N/A</u> Phone : <u>N/A</u> Mailing Address: <u>N/A</u>	<u>N/A</u>	<u>N/A</u>
Name of Firm: <u>N/A</u> Type: <u>N/A</u> Registration ID: <u>N/A</u> Contract Start: <u>N/A</u> Contract End: <u>N/A</u> Amount Paid: <u>N/A</u> Phone : <u>N/A</u> Mailing Address: <u>N/A</u>	<u>N/A</u>	<u>N/A</u>
Name of Firm: <u>N/A</u> Type: <u>N/A</u> Registration ID: <u>N/A</u> Contract Start: <u>N/A</u> Contract End: <u>N/A</u> Amount Paid: <u>N/A</u> Phone : <u>N/A</u> Mailing Address: <u>N/A</u>	<u>N/A</u>	<u>N/A</u>

Did the organization receive government grants during this fiscal year?

Yes No

Government Grant Agency	Grant Amount
N/A	N/A
N/A	N/A
N/A	N/A
N/A	N/A
N/A	N/A

Documents

Attached organization's required documents:

- IRS document
- Certified Public Accountant's Audit Report
- Certified Public Accountant's Review Report
- Complete Certificate of Amendment or other document amending the name
- Schedule B
- Other documents

Signatures

We certify under penalties of perjury that we reviewed this report, including all attachments, and to the best of our knowledge and belief, they are true, correct and complete in accordance with the laws of the State of New York applicable to this report.

Role	First Name	Last Name	Email
President	Christopher	Koenig	president@niagaralutheran.org
Chief Financial Officer	Laurie	Jankowski	ljankowski@niagaralutheran.org

Signature of **Christopher Koenig** DocuSigned by:
C5BD86EF235E404... Date: 10/18/2021

President

Signature of **Laurie Jankowski** DocuSigned by:
8009FF57B34A4BF... Date: 10/18/2021

Chief Financial Officer

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 225 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, and Section 405.3 is amended, 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:

* * *

[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 communicable disease of high public health consequence 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 communicable disease of high public health consequence pursuant to Part 2 of this Title or other public health emergency, the commissioner may direct general hospitals, as defined in Article 28 of the public health law, and consistent with the federal Emergency Medical Treatment and Labor Act (EMTALA), to accept patients pursuant to such procedures and conditions as the commissioner may determine appropriate.

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

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

Legislative Objectives:

The legislative objective of PHL § 225 is, in part, to protect the public health by authorizing 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.

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 communicable disease of high public health consequence or other public health emergency.
- Permits the Commissioner to direct general hospitals to accept patients during an outbreak of a communicable disease of high public health consequence or other public health emergency, provided it's done consistent with the federal Emergency Medical Treatment and Labor Act (EMTALA).

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 communicable disease of high public health consequence, 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.

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.

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 communicable disease outbreaks.

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, 60 days from the date of filing. The Department anticipates continuing these emergency regulations until such time as the regulation can be finalized for permanent adoption.

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

REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

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

Compliance Requirements:

Under existing regulation, local health departments already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties. With respect to mandating syndromic surveillance reporting during an outbreak of a communicable disease of high public health consequence, hospitals are already reporting syndromic surveillance data regularly and voluntarily.

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:

These regulations have been proposed for permanent adoption, so all parties have had an opportunity to provide comments during the notice and comment period.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

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

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

United States Census data:

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

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

Census estimated county populations for 2010:

Albany County
Dutchess County
Erie County

Monroe County
Niagara County
Oneida County
Onondaga County

Orange County
Saratoga County
Suffolk County

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

As the proposed regulations largely clarify existing responsibilities and duties among regulated entities and individuals, no additional recordkeeping, compliance requirements, or professional services are expected. With respect to mandating syndromic surveillance reporting during an outbreak of a communicable disease of high public health consequence, hospitals are already reporting syndromic surveillance data regularly and voluntarily. Additionally, the requirement for local health departments to continually report to the Department during such an outbreak is historically a practice that already occurs.

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 and 405.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Rural Area Participation:

These regulations have been proposed for permanent adoption, so all parties have had an opportunity to provide 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 experiencing is close to that of a regular flu season, but has been at those levels or higher for more than 40 months in a row. New York still has a 7-day average of over 500 reported cases per day, and over 500 people in the hospital affected by COVID each day. Regrettably, New York still averages about 7 deaths per day associated with COVID-19.

Severe Acute Respiratory Syndrome Coronavirus -2 (SARS-CoV2) still mutates, although the current dominant strain is XBB, a subvariant group 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.

An outbreak of Marburg virus is currently taking place in Equatorial Guinea, and one just ended in Tanzania. 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. Outbreaks of Lassa fever, Crimean-Congo hemorrhagic fever, measles, Dengue fever, and Zika virus are also currently taking place in various parts of the globe.

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. 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, with the potential to contribute to increased numbers of polio cases in one or the other country. Polio is also being actively seen in several other countries around the world.

The emergency regulations are needed to ensure the continued coordination of communicable disease outbreaks between the NYS Department of Health and local health departments. In addition, the emergency regulations will ensure the continued reporting by hospitals of syndromic surveillance data and ensure that the Commissioner has express authority

to direct hospitals to accept patients during an outbreak of a communicable disease of high public health consequence.

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 communicable diseases in New York State, especially those of high public health consequence. 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 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.

(d) In the case of nursing homes previously designated by the Department as a COVID-positive only facility, the term “applicable positivity rate” shall be as defined in clause (c) of this subparagraph.

(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 Secretary of State. These regulations are expected to be proposed for permanent adoption at a future meeting of the Public Health and Health Planning Council.

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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 Public Health Law Sections 225, 2800, 2803, 3612, and 4010, as well as Social Services Law Sections 461 and 461-e, Title 10 (Health) and Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York, are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 2.61 of Title 10 is repealed.

Subparagraph (vi) of paragraph (10) of subdivision (b) of Section 405.3 of Part 405 of Title 10 is repealed.

Paragraph (5) of subdivision (a) of Section 415.19 of Part 415 of Title 10 is repealed.

Paragraph (7) of subdivision (d) of Section 751.6 of Title 10 is repealed.

Paragraph (6) of subdivision (c) of Section 763.13 of Title 10 is repealed.

Paragraph (7) of subdivision (d) of Section 766.11 of Title 10 is repealed.

Paragraph (8) of subdivision (d) of Section 794.3 of Title 10 is repealed.

Paragraph (5) of subdivision (q) of Section 1001.11 of Title 10 is repealed.

Paragraph (18) of subdivision (a) of Section 487.9 of Title 18 is repealed.

Paragraph (14) of subdivision (a) of Section 488.9 of Title 18 is repealed.

Paragraph (15) of subdivision (a) of Section 490.9 of Title 18 is repealed.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) Sections 225(5), 2800, 2803(2), 3612 and 4010(4) authorize the Public Health and Health Planning Council (PHHPC) and Commissioner to promulgate regulations: amending the State Sanitary Code; implementing the purposes and provisions of PHL Article 28; with respect to certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies; and with respect to hospice organizations.

Social Service Law (SSL) Section 461 authorizes the Department of Health (Department) to promulgate regulations establishing general standards applicable to Adult Care Facilities (ACF).

Legislative Objectives:

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

Article 40 declares that hospice is a socially and financially beneficial alternative to conventional curative care for the terminally ill. Lastly, the legislative objective of SSL Section 461 is to promote the health and well-being of residents of ACFs.

Needs and Benefits:

COVID-19 vaccines are safe and effective, and COVID-19 vaccination offers the benefit of helping to reduce the number of COVID-19 infections. The State's regulation requiring covered entities to ensure that personnel are fully vaccinated against COVID-19, has increased the percentage of health care workers who are vaccinated against COVID-19.

However, federal recommendations for COVID-19 vaccination have changed and are expected to evolve as the future course of COVID-19 becomes more apparent. Additionally, there are now effective treatments for COVID-19, case rates appear to have steadily declined, and hospitalizations due to COVID-19 have substantially decreased.

In response to changes in federal recommendations for COVID-19 vaccination and the overall pandemic landscape, the proposed regulation would repeal the requirement that covered entities ensure that personnel are fully vaccinated against COVID-19, as well as repeal the requirement that covered entities document evidence thereof in appropriate records. In lieu of a regulation, covered entities may now individually consider how to implement their own internal policies regarding COVID-19 vaccination, provided they remain in compliance with other applicable state and federal laws and regulations.

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

The proposed regulation does not impose any new costs to regulated entities.

Cost to State and Local Government:

The proposed regulation does not impose any new costs to the State or local governments.

Cost to the Department of Health:

There are no additional costs to the State or local government but there may be modest costs savings, since the State and local governments will no longer need to perform surveillance of regulated parties to monitor compliance with the requirement that personnel be fully vaccinated against COVID-19.

Local Government Mandates:

There is no impact on local government mandates associated with this proposed rule change.

Paperwork:

No new paperwork is necessitated by the proposed regulation.

Duplication:

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

Alternative Approaches:

One alternative the Department considered was to amend the regulation to require personnel to be “up to date” on COVID-19 vaccinations, rather than “fully vaccinated.” However, this option was not considered viable because of the likelihood of continued changes to federal COVID-19 vaccine recommendations and the language surrounding those recommendations. Another alternative that was considered was to allow personnel to wear a well-fitting face covering in lieu of being vaccinated. However, this option was ultimately not chosen because of unknowns surrounding future trends in COVID-19 case rates and because of the likely continuing evolution of federal vaccine recommendations.

Federal Requirements:

On November 5, 2021, the U.S. Department of Health and Human Services’ Centers for Medicare & Medicaid Services (CMS) issued an interim final rule (CMS-3415-IFC) requiring Medicare and Medicaid-certified providers and suppliers to ensure that their staff were fully vaccinated for COVID-19 (i.e., obtain the primary vaccination series). On April 10, 2023, the President signed legislation that ended the COVID-19 national emergency and subsequently on May 11, 2023, the COVID-19 public health emergency expired. In light of these developments and comments received on the interim final rule, CMS has stated that it will soon end the requirement that covered providers and suppliers establish policies and procedures for staff vaccination, which would bring the state and federal requirements into alignment.

Compliance Schedule:

The regulations will become effective upon publication of a Notice of Adoption in the New York State Register. Effective immediately the Department will cease citing providers for failing to comply with the requirements of 10 NCYRR Section 2.61 while the regulation is in the process of being repealed. The Department may, however, continue to seek sanctions against providers based on previously cited violations that allegedly occurred.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

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

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

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

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

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

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 2803 and 2805-t(5) of the Public Health Law, sections 400.25, 405.5, 405.12, 405.19, 405.21, 405.22, and 405.31 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are hereby amended, to be effective upon filing a Notice of Adoption in the New York State Register, to read as follows:

Section 400.25 of Title 10 is amended by adding a new subdivision (g) to read as follows:

(g) General hospitals shall submit information for complying with the reporting requirements of Public Health Law Section 2805-t(17)(a)(i), (ii) and (iii), allowing patients and the public to clearly understand and compare staffing patterns and actual levels of staffing across facilities. Such information shall be filed with the department by filling out the General Hospital Clinical Staffing Plan Template using an electronic reporting system designated by the department.

Subdivision (a) of section 405.5 of Title 10 is amended to read as follows:

(a) Organization and staffing.

- (1) The hospital shall have a written nursing service plan of administrative authority and delineation of responsibilities. The director of the nursing service shall be a licensed registered professional nurse who is qualified by training and experience for such position. [He or she] The director of the nursing service shall be responsible for the operation of the service, including developing [a plan] such nursing service plan to be approved by the hospital for determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all

areas of the hospital in accordance with the hospital's clinical staffing plan as provided in paragraph (8) of this subdivision.

* * *

- (8) Hospitals must establish and maintain a clinical staffing committee as provided in section 2805-t of the Public Health Law. The clinical staffing committee shall develop and oversee the implementation of an annual clinical staffing plan. The clinical staffing plan shall delineate intensive care and critical care units of the hospital. The clinical staffing plan shall include specific staffing for each patient care unit and work shift and shall be based on the needs of patients. Staffing plans shall include specific guidelines or ratios, matrices, or grids indicating how many patients are assigned to each registered nurse and the number of nurses and ancillary nursing personnel to be present on each unit and shift. Ancillary nursing personnel includes, but is not limited to, certified nurse assistants, patient care technicians, and other non-licensed members of the frontline team assisting with nursing tasks. Each hospital shall adopt and submit its first clinical staffing plan under this paragraph no later than July 1, 2022, and annually thereafter. Beginning January 1, 2023, and annually thereafter, each hospital shall implement the clinical staffing plan adopted by July 1 of the prior calendar year, and any subsequent amendments, and assign personnel to each patient care unit in accordance with the plan. Factors to be considered and incorporated in the development of the clinical staffing plan shall include, but are not limited to:
- (i) census, including total numbers of patients on the unit on each shift and activity such as patient discharges, admissions, and transfers;

- (ii) measures of acuity and intensity of all patients and nature of the care to be delivered on each unit and shift;
- (iii) skill mix;
- (iv) the availability, level of experience, and specialty certification or training of nursing personnel providing patient care, including charge nurses, on each unit and shift;
- (v) the need for specialized or intensive equipment;
- (vi) the architecture and geography of the patient care unit, including but not limited to placement of patient rooms, treatment areas, nursing stations, medication preparation areas, and equipment;
- (vii) mechanisms and procedures to provide for one-to-one patient observation, when needed, for patients on psychiatric or other units as appropriate;
- (viii) other special characteristics of the unit or community patient population, including age, cultural and linguistic diversity and needs, functional ability, communication skills, and other relevant social or socio-economic factors;
- (ix) measures to increase worker and patient safety, which could include measures to improve patient throughput;
- (x) staffing guidelines adopted or published by other states or local jurisdictions, national nursing professional associations, specialty nursing organizations, and other health professional organizations;

- (xi) availability of other personnel supporting nursing services on the unit;
- (xii) waiver of plan requirements in the case of unforeseeable emergency circumstances as defined in subdivision fourteen of section 2805-t of the Public Health Law;
- (xiii) coverage to enable registered nurses, licensed practical nurses, and ancillary staff to take meal and rest breaks, planned time off, and unplanned absences that are reasonably foreseeable as required by law or the terms of an applicable collective bargaining agreement, if any, between the general hospital and a representative of the nursing or ancillary staff;
- (xiv) the nursing quality indicators required under section 400.25 of this Title;
- (xv) general hospital finances and resources; and
- (xvi) provisions for limited short-term adjustments made by appropriate general hospital personnel overseeing patient care operations to the staffing levels required by the plan, necessary to account for unexpected changes in circumstances that are to be of limited duration.

Paragraph (1) of subdivision (a) of section 405.12 of Title 10 is amended to read as follows:

- (1) The operating room shall be supervised by a registered professional nurse or physician who the hospital finds qualified by training and experience for this role.

- (i) Nursing personnel shall be on duty in sufficient number for the surgical suite in accordance with the needs of patients and the complexity of services they are to receive and in accordance with the annual clinical staffing plan established under paragraph (8) of subdivision (a) of section 405.5 of this Title.

* * *

Paragraph (2) of subdivision (d) of section 405.19 of Title 10 is amended to read as follows:

- (2) Nursing services shall be in accordance with the annual clinical staffing plan established under paragraph (8) of subdivision (a) of section 405.5 of this Title. In addition:

* * *

Subparagraph (iv) of paragraph (2) of subdivision (d) of section 405.21 is amended to read as follows:

- (iv) Level II, Level III and RPC perinatal care services shall maintain a nursing staff in accordance with the annual clinical staffing plan established under paragraph (8) of subdivision (a) of section 405.5 of this Title that is appropriately trained and adequate in size to provide specialized care to distressed [mothers and infants] patients. The number of patient care staff on duty during any shift shall reflect the volume and [nature] acuity of patient services being provided during that shift.

Subdivisions (a), (b), and (d) of section 405.22 of Title 10 are amended to read as follows:

- (a) General provisions. Critical care and special care services are those services which are organized and provided for patients requiring care on a concentrated or continuous basis to meet

special health care needs. Each service shall be provided with a concentration of professional staff and supportive services that are appropriate to the scope of services provided.

* * *

(5) Minimum nurse to patient ratios for intensive care and critical care patients. There shall be a minimum of one registered professional nurse assigned to care for every two patients that an attending practitioner determines to require intensive or critical care.

(i) The minimum registered professional nurse-to-patient ratio set forth in this subdivision shall apply whenever the attending practitioner determines that the condition and medical needs of the patient requires admission to an intensive care unit (ICU) or critical care unit (CCU), and considers the continued need for that level of care based on ongoing assessments. The minimum staffing standard or ratio provided to a patient in an ICU or CCU shall be based on patient acuity, as determined by the attending practitioner and not solely based on the location of the patient.

(ii) The minimum staffing requirements of this subdivision shall not apply to a patient when:

(a) the attending practitioner has determined that a patient in the ICU or CCU no longer requires intensive or critical care or the patient is awaiting transfer to a lower level of care unit; or

(b) a patient is placed in the ICU or CCU when an acute care or other inpatient service bed is not available and the attending practitioner has determined that the patient in the ICU or CCU does not require intensive or critical care;

(iii) Complaints of potential violations of this subdivision shall be made to the clinical staffing committee. Complaints of potential violations of this subdivision, that have first been submitted

to the clinical staffing committee, may be made to the department if they remain unresolved by the clinical staffing committee after 90 days have elapsed.

(b) Pediatric Intensive Care Unit (PICU) Services.

* * *

(2) General.

* * *

(ii) Organization and Direction. The PICU shall be directed by a board certified pediatric medical, surgical, or anesthesiology critical care/intensivist physician who shall be responsible for the organization and delivery of PICU care and has specialized training and demonstrated competence in pediatric critical care. Such physician in conjunction with the nursing leadership responsible for the PICU shall participate in administrative aspects of the PICU. Such responsibilities shall include development and annual review of PICU policies and procedures, oversight of patient care, quality improvement activities, and staff training and development.

* * *

(d) The PICU shall provide registered professional nursing staffing sufficient to meet critically ill or injured pediatric patient needs, ensure patient safety and provide quality care, and that meets the ICU clinical staffing plan requirements in subdivision (c) of this section.

* * *

(d) Burn unit/center.

(1) Personnel and staffing.

(i) A burn unit/center shall designate a director who is a board-certified or board-admissible general or plastic surgeon with one additional year of specialized training in burn therapy or equivalent experience in burn patient care.

(ii) Staff for the burn unit/center shall be in accordance with the annual clinical staffing plan established under paragraph (8) of subdivision (a) of section 405.5 of this Title and shall include:

* * *

Paragraph (5) of subdivision (p) of section 405.31 of Title 10 is amended to read as follows:

(5) Nursing Minimum Staffing Requirements. Nurse staffing shall be in accordance with the annual clinical staffing plan established under paragraph (8) of subdivision (a) of section 405.5 of this Title. In addition:

(i) Nursing staff shall have ongoing education and training in live donor liver transplantation nursing care (donor and recipient). This shall include education in the pain management issues particular to the donor. The registered professional nursing ratio shall be at least one registered professional nurse for every two patients (1:2) in the ICU/PACU level setting, increased as appropriate for the acuity level of the patients.

(ii) After the donor is transferred from the ICU/PACU, the registered professional nursing ratio shall be at least 1:4 on all shifts, increased as appropriate for the acuity level of the patients

(iii) The same registered professional nurse shall not take care of both the donor and the recipient.

(iv) The nursing service shall verify that the potential donor received appropriate pre-surgical information.

(v) The names and contact numbers of the transplant team shall be posted on all units receiving transplant donors.

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 implement PHL Article 28 and establish minimum standards for health care facilities.

PHL § 2805-t(5) requires the Commissioner to promulgate regulations relating to nurse staffing in intensive care and critical care units of general hospitals. Such regulations must consider the factors set forth in PHL § 2805-t(4)(b), standards in place in neighboring states, and a minimum standard of 12 hours of registered nurse care per patient day.

In addition, PHL § 2805-t(5) states that a clinical staffing plan shall comply with “[r]egulations made by the department on burn unit staffing, liver transplant staffing, and operating room circulating nurse staffing.”

PHL § 2805-t(17)(c) requires the Commissioner to promulgate regulations to provide a uniform format or form for complying with reporting requirements.

Legislative Objectives:

The objective of Chapter 155 of the Laws of 2021 is to establish clinical staffing committees and staffing plans for nursing and unlicensed direct care staff in hospitals to help ensure that these facilities operate in a manner that guarantees the public safety and the delivery of quality health care services.

Needs and Benefits:

Rulemaking was necessitated by the addition of Section 2805-t to the Public Health Law under Chapter 155 of the Laws of 2021. These regulations are needed to incorporate the statutory clinical staffing committee requirements and factors for consideration regarding staffing of the intensive and critical care units into the general hospital operational standards regulations.

Having safe and appropriate levels of nurse and ancillary member staffing has been shown to reduce avoidable and adverse patient outcomes. Research has demonstrated that hospitals with lower nurse staffing levels have higher rates of pneumonia, shock, cardiac arrest, urinary tract infections and upper gastrointestinal bleeds; all leading to higher costs and mortality from hospital-acquired complications. The improved outcomes reduce medical malpractice and other penalties resulting from avoidable occurrences and poor patient satisfaction. In addition, assuring sufficient staffing of hospital personnel protects patients and supports greater retention of nurses and promotes safer working conditions.

Allowing each hospital to collaboratively develop these clinical staffing plans with the nurses and other staff will allow for the best staffing outcomes at these hospitals. With a hospital-by-hospital approach, they will be able to balance what is best for the patient and workforce while taking into account the varying needs of each individual hospital.

Establishing these clinical staffing committees and staffing plans for nursing and unlicensed direct care staff in hospitals will help ensure that these facilities operate in a manner that guarantees the public safety and the delivery of quality health care services.

Costs:

Nominal costs are associated with the implementation of these regulations, as further outlined below.

Costs to Private Regulated Parties:

Nominal costs may be incurred by a general hospital operator to adhere to these regulations. This cost will be incurred by the current operator of the facility and would relate to the convening of a clinical staffing committee and production of the clinical staffing plan developed, including staff time to discuss, agree upon, produce and disseminate the clinical staffing plan.

Costs to Local Governments:

There are 14 hospitals owned by the counties and municipalities which will be affected by this regulation and the costs associated with it.

Cost to State Government:

The annual costs to Department of Health operations for implementation of this regulation is estimated at \$1.82 million. The regulation is anticipated to require 75 additional on-site hospital surveys per year, or the equivalent of one survey per hospital over a three-year period. The Department would require 2 teams, each consisting of 3 surveillance staff, to perform on-site inspection and enforcement activities. An additional 6 staff would be required for establishment of a Hospital Complaint Intake program and to meet other administrative and reporting requirements.

The Department currently contracts with IPRO for a portion of hospital surveillance activities, including managing postings on the NYS Hospital Profiles website. Without the establishment of a State staff-only hospital staffing enforcement program, this regulation would likely result in additional costs for contract Registered Nurse surveillance staff.

Local Government Mandates:

General hospitals that fall under the jurisdiction of local government will be affected and be subject to the same requirements as any other general hospital established under PHL Article 28.

Paperwork:

Each hospital was required to file their clinical staffing plan to the Department by July 31, 2022, in the matter and form determined by the Department. Each hospital will continue to be required, at least annually by every July 31, to file their clinical staffing plan to the Department.

General hospitals shall submit information for complying with the reporting requirements of Public Health Law Section 2805-t(17)(a)(i), (ii) and (iii), allowing patients and the public to clearly understand and compare staffing patterns and actual levels of staffing across facilities. Such information shall be filed with the department by filling out the General Hospital Clinical Staffing Plan Template using the Health Electronic Reporting Data System (HERDS) on the Health Commerce System (HCS).

Duplication:

These proposed regulatory amendments do not duplicate State or federal rules.

Alternatives:

The amended regulations implement the statutory requirements for the development of clinical staffing plans and the form they shall take. The Department considered current standards employed in all states regarding staffing requirements for direct care staff. The Department also considered the impact of implementation of an absolute threshold or fixed ratio for staffing decisions on patient safety, consistent with the provision of a high level of care, staffing availability and data availability. To promote the general quality of care rendered by a general hospital through improved staffing, the Department's regulatory framework requires consideration of the combination of factors staffing committees would find relevant to assessing quality of care and patient safety in the general hospital. The Department also included additional factors to consider in the development of staffing requirements for critical and intensive care units.

On February 16, 2022, the Department proposed a rule that did not establish staffing ratios for ICU and critical care units of general hospitals. This regulation, as revised, now requires one registered professional nurse for every two intensive care or critical care patients.

Federal Standards:

The amended regulations do not exceed any minimum standards of the federal government.

Compliance Schedule:

The amended regulations will take effect upon publication of a Notice of Adoption in the *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 15 general hospitals owned by municipalities and local governments. The Department does not anticipate an increase in general hospital establishment applications by such applicants as a result of the proposed regulation.

Compliance Requirements:

Regulated parties are expected to be in compliance with the amended regulations as of January 1, 2022. The amended regulations will define new, statutory requirements for general hospitals to create a clinical staffing committee made up of registered nurses, licensed practical nurses, ancillary staff members providing direct patient care, and hospital administrators. The committee will be responsible for developing and overseeing the implementation of a clinical staffing plan, which must take into account several factors. Clinical staffing plans are required to be completed and submitted to the Department by July 1 each year, and they must specifically address intensive and critical care unit staffing, requiring at least 12 hours of registered nurse care per patient day.

Professional Services:

These regulations are not expected to require any additional use of professional services.

Compliance Costs:

Nominal costs may be incurred by a general hospital operator to adhere to these regulations. This cost will be incurred by the current operator of the facility and would relate to the convening of a clinical staffing committee and production of the clinical staffing plan developed, including staff time to discuss, agree upon, produce and disseminate the clinical staffing plan.

Economic and Technological Feasibility:

There are no economic or technological impediments to the proposed regulatory amendments.

Minimizing Adverse Impact:

Minimal flexibility exists to minimize impact since these new requirements are statutory and apply to all general hospital operators. Operators will convene their own clinical staffing committee to determine the appropriate staffing levels, with inclusion of factors that consider the unique operating situation of each general hospital.

Small Business and Local Government Participation:

The Department has already taken several steps to notify the hospital industry on the effects of this regulation and has provided the opportunity for public comment. On October 7, 2021, at the Public Health and Health Planning Council (PHHPC), the Department first presented a version of this regulation for information and discussion purposes. At that meeting the regulation was reviewed and discussed by PHHPC members. In addition, the public,

including the effected parties to this regulation, were afforded and opportunity to ask questions and provide comments.

This revised regulation was presented to PHHPC again on February 9, 2023.

In addition, there were conference calls made to the various associations representing the nursing home industry to inform them of the regulation and to provide an opportunity to ask questions.

Further, the regulation will be filed in the State Register, providing another opportunity for public comments and review. Once completed, the regulation will again go to PHHPC where there will be another opportunity for public comment.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on a party subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one is not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Number of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas, for the purpose of this Rural Area Flexibility Analysis (RAFA), are defined under 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 have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is 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	

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

General hospital operators are expected to be in compliance with the amended regulations as of January 1, 2022. There are several general hospitals in rural areas. The amended regulations will define new, statutory requirements for general hospitals to create a clinical staffing committee made up of registered nurses, licensed practical nurses, ancillary staff members providing direct patient care, and hospital administrators. The committee will be responsible for developing and overseeing the implementation of a clinical staffing plan, which must take into account several factors. Clinical staffing plans are required to be completed and submitted to the Department by July 1 each year, and specifically address intensive and critical care unit staffing requiring at least 12 hours of registered nurse care per patient day. Record keeping will be

related to general hospital operators having to provide their staffing plan to the Department July 1 of each year. No additional professional staff are expected to be needed as a result of the amended regulations.

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.

Minimizing Adverse Impact:

The amended regulations do not create any adverse effect on regulated parties.

Rural Area Participation:

Organizations who represent the affected parties and the public can obtain the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council and a copy of the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting. The Department will engage in active discussions and dialogue with all interested parties, including industry associations directly impacted by this regulation, to inform them of their need to comply, to answer questions and listen to comments they may have on this regulation.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

The Department has determined that the amended regulations are likely to not have a substantial adverse impact on jobs and employment opportunities. The new clinical staffing plan provisions codifies standard industry considerations in the apportionment of clinical staffing in a general hospital. Such a staffing plan will be developed and executed by existing staff resources. If there is to be any impact on jobs under the regulations, it is likely that general hospitals would need to increase their count of clinical staffing positions, if a general hospital determines under their plan that such additional staff is necessary for compliance. The amended regulations should not cause a change to the workload for the establishment a clinical staffing plan and is most likely to not increase nor decrease jobs and employment opportunities.

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.