

**NEW YORK STATE DEPARTMENT OF HEALTH**  
**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL**  
**ESTABLISHMENT AND PROJECT REVIEW COMMITTEE MEETING**  
**NOVEMBER 2, 2023 10:00 AM**  
**90 CHURCH STREET, 4TH FLOOR, CONFERENCE ROOMS 4A AND 4B, NYC**  
**TRANSCRIPT**

**Mr. Robinson** Starting flag has been raised and we are about to begin. Hello, everybody. Welcome. My name is Peter Robinson. I Chair the Establishment and Project Review Committee. I'm delighted to see members of the council, health department staff and, of course, applicants and the public. Welcome, everybody. Good to see you all. I got to go through my script. Please indulge me. First of all, a reminder that this meeting is subject to the Open Meeting Law and is being broadcast over the internet. For your information, these webcasts can be accessed at the Department of Health's website NYHealth.Gov with the on-demand webcast being available no later than seven days after the meeting for a minimum of thirty days, and then a copy will be retained in the department for four months. A few suggestions which you always hear from us. Synchronized captioning is used so don't talk over each other. First time you speak indicate who you are and identify yourself as a member of the council or staff or in the case of the public, please introduce yourself when you come up to the mic. Mics are hot. They pick up every sound. Don't rustle papers. Don't say anything you don't want broadcast over the internet. I think most of you have been here before, but for those of you that haven't there is a form that needs to be filled out before you enter the meeting room which records your attendance. It's required by the Joint Commission on Public Ethics. Please do it. If you haven't done it yet please step out and just get that done. We'd appreciate it. Thank you very much.

**Mr. Robinson** I'm going to jinx this and say we don't have a long agenda today.

**Mr. Kraut** Big mistake.

**Mr. Robinson** I know. I just did it to get a rise out of people.

**Mr. Kraut** I know.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** We'll get started. Applications for residential health care facilities. This is application 192204E, Highland Nursing Home Inc doing business as North Country Nursing and Rehabilitation Center in St Lawrence County. This is to transfer 100% ownership interest to nine new members. The department recommends approval with a condition and contingencies.

**Mr. Robinson** May I have a motion?

**Mr. Robinson** Thank you, Dr. Berliner.

**Mr. Robinson** And a second?

**Mr. Robinson** Dr. Kalkut.

**Mr. Robinson** Mr. Furnish.

**Mr. Furnish** Good morning, everyone. My name is Mark Furnish. I'm with the Department of Health. Highland Nursing Home is a 140-bed proprietary residential health care facility located in St Lawrence County. It's requesting a transfer for 100% of its ownership to share from three current shareholders to nine current shareholders. You're probably saying to yourself this sounds very familiar. It's because a couple cycles back this past the EPRC committee and between then and the full PHHPC of that time, I made the decision to pull it just to make sure that the membership was okay based on similar names and things like that. We've went back, we've verified that everything is legitimate, and the CNC passes this. There are two appraisals for the lease because this is going to be a leased property that range from \$3.5 million to \$4.1 million. The rent is within the range of appraisals by two appraisers. I do want to mention the long-term care Ombudsman has no objection to the CON sale. However, she did note that Oak Hill Rehab and Nursing Center there is limited staff on the night shift and the Ombudsman has been discussing this with the administration. That's one of the facilities that some of the shareholders operate. She also raised concerned about the quality of incontinence supplies and that fresh fruits and vegetables are not available. The Ombudsman suggest that fresh fruits and vegetables be added to the menu options. Based on the character and competence, the star ratings are good, financial feasibility and there's no need review required. We recommend approval on this application.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** Questions from members of the Committee.

**Mr. Robinson** Mr. La Rue.

**Mr. La Rue** Good morning. Scott La Rue, member of the council. Good morning, Mr. Furnish. Question on the real estate appraisals. First of all, that's great to see that as part of the review so that that's included, because we know that's been a concern of the Attorney General. Who did the appraisals? Was it independent appraisals? What was the process?

**Mr. Furnish** Right now, the way we're doing it is that they have to come up with two independent, independent real estate appraisers to verify that for the location that they're looking at. And then if they don't do that, sometimes we will move it here with a contingency that we will not move forward with the application until such time as they do. But in this case, they do have those appraised appraisals.

**Mr. La Rue** Thank you.

**Mr. La Rue** I do have a question for the applicant when we get there.

**Mr. Robinson** We can do that now.

**Mr. Robinson** Can we call the applicant forward, please?

**Mr. Robinson** Please introduce yourselves.

**Mr. Cicero** Frank Cicero. I'm a consultant to the applicant.

**Mr. Robinson** Thank you.

**Mr. La Rue** Good morning. Is either Joseph or Joshua here?

**Applicant** No.

**Mr. La Rue** My questions are specific to those individuals. I'm not sure how I get my questions answered.

**Mr. Robinson** You may want to ask the consultant and see if they can answer that for you.

**Mr. La Rue** My question is around whether either Joseph or Joshua Landa have any related business activities, affiliation, or connection of any kind to Sentosa. I wanted them on the record to answer that question. They're not here.

**Mr. Cicero** We certainly can answer that question. Based on what occurred after the last time this project was on the agenda; we have looked at that to make sure that we understood it. They have no relationship whatsoever with Sentosa Care.

**Mr. La Rue** There is no affiliated company, related entity, third party, anyone of any kind providing services or connection to Sentosa Care?

**Applicant** I've known them... They're probably like 25 years old. I've known them probably since they were 5. They have no affiliation whatsoever. I can vouch for that.

**Mr. La Rue** Thank you.

**Mr. Robinson** Thank you very much for the answer to that question.

**Mr. Robinson** Other questions?

**Mr. Kraut** Yes, Scott, in answering that question, just so we're clear and the record is clear. If they had a relationship that would have been of concern to you, right?

**Mr. La Rue** It would have spurred more questions.

**Mr. Kraut** Okay.

**Mr. Kraut** Thanks.

**Mr. Kraut** Could I make a suggestion that the statement you just may be provided by those two individuals in a letter to the council before we bring it to the full council.

**Applicant** We will have that to you before the full council meeting.

**Mr. Robinson** Thank you.

**Mr. Robinson** Other questions from the committee members or other members of the council who wishes to speak on this application?

**Mr. Robinson** All in favor?

**All Aye.**

**Mr. Robinson** Any opposed?

**Mr. Robinson** That motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** Application 231011E, Fairport SNF LLC doing business as Fairport Skilled Nursing and Rehab. This is in Monroe County to establish Fairport SNF LLC as the new operator of a 142-bed residential health care facility currently operated by Fairport Baptist Home at 46469 mile point road in Fairport and change its name to We Care at Fairport Nursing and Rehabilitation. The department is recommending approval with a condition and contingencies.

**Mr. Robinson** A motion by Dr. Berliner.

**Mr. Robinson** A second, please.

**Mr. Robinson** Dr. Kalkut.

**Mr. Robinson** Mr. Furnish.

**Mr. Furnish** Yes.

**Mr. Furnish** Just to clarify for the record, I think there's an error. It's no longer We Care. They're doing business as Fairport Skilled Nursing and Rehab.

**Mr. Robinson** Thank you.

**Mr. Furnish** I'll get into why that's important in a second.

**Mr. Furnish** Fairport SNF LLC requests approval to be established as the new operator of Fairport Baptist Homes a 142 Bed not for profit in Monroe County. The current operator of the facility, Fairport Baptist Homes entered into a Chapter 11 bankruptcy in the United States District Court for the Western District of New York on May 6th, 2022. Fairport Baptists indicate that they have a very and I mean very short financial runway and will be forced to close the facility completely if the sale is not completed. Now, this has been a long-tortured path to get here. The original applicants, We Care, they didn't pass our financial feasibility. We looked into finding the new operator, Elsner Zelman who's going to run it as Fairport Skilled Nursing and Rehab. Now, the bankruptcy court has been very interested in this proceeding and wants us to move forward with it, which is the reason why we're bringing them here today. However, we've been hesitant to do so until we found the right kind of applicant that meets our character and competence, financial feasibility and the long-term care ombudsman has no objection to this. With that, the department recommends contingent approval.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions from members of the committee?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** Sounds like you did a good job, Mr. Furnish, in getting this done.

**Mr. Robinson** I'm going to call the question.

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** Application 231044E, Sunset SNF Operations LLC doing business as Sunset Care Center for Rehabilitation.

**Mr. Kraut** I'm going to ask Peter to move this a little later in the agenda. We had people who signed up to speak. They notified us they're delayed in traffic. We need to give them that opportunity. So, we're going to take it up today. We just need to move it a little farther down the agenda when we know the folks that have signed up are here.

**Mr. Robinson** Sounds good.

**Mr. Robinson** Strike that earlier calling.

**Mr. Robinson** Here's the new one. First of all, I'd note application 231220E, Clinton County Nursing Home in Clinton County has been deferred at the applicant's request. Just for the record. Application 231259E is the next application. Tupper Lake Center LLC doing business as Tupper Lake Center for Nursing and Rehabilitation in Franklin County. This is to establish Tupper Lake Center LLC as the new operator of Mercy Living Center, which is a 60-bed residential health care facility currently operated by Adirondack Medical Center at 114 Warburg Avenue in Tupper Lake. The department is recommending approval with a condition and a contingency.

**Mr. Robinson** May I have a motion?

**Mr. Robinson** Mr. Thomas.

**Mr. Robinson** Second, Dr. Kalkut.

**Mr. Robinson** Mr. Furnish.

**Mr. Furnish** Yes, Mark Furnish again from the department.

**Mr. Furnish** Tupper Lake LLC is requesting approval to be established as a new operator of Mercy Living Center, a 60-bed voluntary, not for profit in Franklin County. Currently, the facility is operated by an Adirondack Medical Center which entered into an operations and transfer agreement for the transfer and operations of the nursing home. Further Adirondack Medical Center entered into a contract for the sale of the property in which the applicants have common ownership. The applicant at the department's request has submitted two New York State licensed realtors attesting to the reasonableness of the per

square footage rental. Also, the same question that came up. Some of the people mentioned in the application are on this one. I believe the same holds true for them as well with the question.

**Mr. Robinson** Anything more on this application?

**Mr. Furnish** No.

**Mr. Furnish** With that, we recommend contingent approval.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions from the committee?

**Mr. Robinson** Mr. La Rue.

**Mr. La Rue** For the applicant, please.

**Mr. Robinson** For the applicant, please.

**Mr. Robinson** I think you were both introduced at the other applications, so please proceed with your question.

**Mr. La Rue** Good morning. I'm going to ask the same question that I asked on the previous application. This one has two additional proposed ownership members. Neither Alan, Stephen, Joseph or Joshua or anyone else in this proposed ownership has any affiliation, relationship, contractual relationship or participates in Sentosa Care in any way whatsoever?

**Applicant** That is correct.

**Mr. La Rue** Thank you.

**Mr. Kraut** Just to be clear, because there's an ownership group and then there's a real estate group. Does that apply to everybody in the real estate group as well?

**Applicant** That's correct.

**Mr. Kraut** I think the same letter that you would provide us for the previous application should also in a separate letter so the file is complete would be for this application as well.

**Mr. Robinson** Other questions for the committee?

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** Call the question.

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** Moving on to applications for Home Health Agency licensure.

**Mr. Robinson** Application 231010E, Villas Home Care LLC with a service area including Clinton, Essex, and Franklin counties to establish a new licensed Home Care Services agency at 61 Beekman Street in Plattsburgh. Department is recommending approval.

**Mr. Robinson** Motion, please.

**Mr. Robinson** Dr. Kalkut.

**Mr. Robinson** Second, Mr. Thomas.

**Mr. Robinson** Mr. Furnish.

**Mr. Furnish** This is a licensed home care service agency. I've briefed this committee twice on the need and the new need methodology on this. This one passes need based on the fact that it's in a county of presumed need. The applicant has passed our required character and competence, financial feasibility. It has a workforce statement that should be in your attachments. That was at the request of this committee. Thank you.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions from the committee?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Thank you.

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** Hearing none call the question.

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** An application for home health agency licensure. This is an establishment and change of ownership. Application 222238E, Auburn Assisted Living LLC. There is a long geographic list which is on the agenda. This is to establish Auburn Assisted Living LLC as the new operator of a licensed home care services agency currently operated by Northbrook Heights Home for Adults Inc at 170 Murray Street, Murray Street Extension in Auburn, New York. Department is recommending approval with continuances.

**Mr. Robinson** Motion, please.

**Mr. Robinson** Mr. Thomas.

**Mr. Robinson** Dr. Kalkut.

**Mr. Robinson** Mr. Furnish.

**Mr. Furnish** Yes.

**Mr. Furnish** Again, this is another licensed home care service agency. This one is associated solely with an assisted living program. It passes need for that. It passes our character and competence and financial feasibility. They do have a workforce statement at the request of this committee. With that, we recommend approval.

**Mr. Robinson** Any questions on this application?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Thank you.

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** Hearing none call the question.

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** We're up to Application 222220E, Kris Agency and Home Care Inc. Again, the geographic service area is noted on the agenda. This is to transfer 90.1% ownership interest from one current shareholder to an existing shareholder. The department is recommending approval with a contingency.

**Mr. Robinson** A motion, please.

**Mr. Robinson** Dr. Berliner.

**Mr. Robinson** A second, Dr. Kalkut.

**Mr. Robinson** Mr. Furnish.

**Mr. Furnish** Yes.

**Mr. Furnish** This particular licensed home care service agency is in counties of Queens, the Bronx, Nassau and New York Counties. Those are counties without presumed need. However, there is in our regulations, if there's a change of ownership happens to an agency that serving over 25 patients, as attested by the current operator it surpasses the need. With that, it passes need. Our character and competence is sufficient. Financial



feasibility is there and the workforce statement at the request of this committee is present. With that, we recommend approval.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions from the committee?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Thank you.

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** Hearing none call the question.

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Kraut** We're also waiting for Ann Monroe who has questions for the applicant. She asked us to wait till she arrived.

**Mr. Robinson** Till Ann arrives.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** We'll continue on.

**Mr. Robinson** Application 222255E, Riverside Select Services LLC doing business as Cottage Homecare Services. Again, the geography listed on the agenda to establish Riverside Select Services LLC as the new operator of a licensed homecare services agency currently operated by Cottage Homecare Services Inc. Department is recommending approval.

**Mr. Robinson** Motion by Mr. Thomas.

**Mr. Robinson** Second by Dr. Kalkut.

**Mr. Robinson** Mr. Furnish.

**Mr. Furnish** Yes.

**Mr. Furnish** This is the geographical service area of the Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk and Westchester Counties. Again, all those counties are listed as counties without presumed need. However, since this is a change of ownership, again, since the current operation serves over 25 or more lists of patients it passes need. Character and competence is sufficient and financial sustainability is there. Their

workforce statement is in the attachments at the request of this committee. With that, we recommend approval.

**Mr. Robinson** Committee questions?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Thank you.

**Mr. Robinson** Anybody from the public on this application?

**Mr. Robinson** Hearing none called a question.

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** We are juggling the agenda around both for quorum issues and also because we understand that there are still people wanting to speak on one of the applications. You'll indulge us if we are taking these a little bit out of the order that we published.

**Mr. Robinson** I'm moving to applications for ambulatory surgery centers.

**Mr. Robinson** Application 231369E, West Side ASC LLC doing business as West Side Ambulatory Surgery Center in New York County. This is to establish a new multi-specialty ambulatory surgery center to be shared with Hudson Specialty Surgery Center in a temporarily distinct. Just to be clear if my pronunciation isn't right. Distinct arrangement at 450 West 31st Street in New York. The department is recommending approval with conditions and contingencies with an expiration of the operating certificate five days from the date of its issuance.

**Mr. Robinson** A motion, please.

**Mr. Robinson** Dr. Berliner.

**Mr. Robinson** Second, Mr. Thomas.

**Mr. Robinson** Ms. Glock.

**Ms. Glock** Good morning. Shelly Glock from the department. West Side ASC is seeking approval to establish a multi-specialty freestanding ASC in New York County. They will share a leased space in a temporal separation agreement with Hudson Yard Surgery Center. Hudson Yards is a single specialty ophthalmology ASC. The proposed operator of the surgery center is also the owner operator of Hudson Yards Surgery Center. The ASC will specialize in podiatry, pain management and general surgical services and consists of three operating rooms. The proposals at West Side will operate only on Friday and Saturday when Hudson Yards Surgery Center is closed. The sole member of West Side

ASC is Dr. John Tatum. I apologize if I mispronounced your name, who will also be the Medical Director. He's also the sole member of Hudson Yards ASC, as I previously mentioned. They are projecting 900 visits in year one, a little over 2,000 in year three, with Medicaid at 10%, in charity care at 2%. These projections are based on the current practices of participating surgeons. The applicant states that the procedures moving are 54% are currently being performed in other ASCs, 14% in the hospital setting, and 32% in an office-based setting. The project costs will be covered with member equity. The department is recommending approval with conditions and contingencies with an expiration of the operating certificate five years from the date of issuance.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** Questions from the committee?

**Mr. Robinson** Can we ask the applicant to come forward?

**Mr. Robinson** Kindly introduce yourselves.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** Dr. Kalkut.

**Dr. Kalkut.** I had a question for Ms. Glock.

**Mr. Kraut** Go ahead.

**Mr. Robinson** Go ahead and do that.

**Dr. Kalkut.** Sorry.

**Dr. Kalkut.** Are there other examples of never really separated surgical centers or other providers in the state?

**Ms. Glock** The department has approved another application, a previous application when it was a relocation of a ASC to be temporarily shared space. We've approved that. There are two instances that I found where we have approved that type of arrangement for a diagnostic and treatment center. The department does have guidelines on shared space. That's out on the website. CMS does allow two ACSs who are Medicare certified to share space if they're temporarily separated.

**Mr. Kraut** Could you just explain how this works? How do I know who's responsible? When I walk through the door are there are two separate doors with two separate names on it? How are you holding yourself out to the public so there's no confusion as to who's responsible for my care?

**Applicant** The signage will have two separate sides, one with the existing Hudson Surgery Center, which will say only Monday through Thursday and then the West Side ASC Friday and Saturday general surgery. As far as that, there'll be signage. Staff will be independent in each of those two entities.

**Mr. Kraut** How about the boards? Are there two separate boards?

**Applicant** I mean, he is the sole member.

**Mr. Kraut** You need to have a board to review quality, do credentialing.

**Applicant** It'll be separate.

**Mr. Kraut** You're telling me there's no other person other than the owner is also the sole board member? Could I ask DOH legal?

**Mr. Kraut** The question I have is the board structure is a single board member. There's no board.

**Ms. Ngwashi** Is it just one member? You don't have any board of directors?

**Mr. Kraut** Who oversees quality? I mean, with all fairness, there's a bit of a conflict here in that you are the owner. Who oversees the quality of care? Who does the credentialing of the docs that are going there? Who holds accountability for the operations of the facility?

**Applicant** I mean, there will be separate through utilization review and case management as far as review.

**Mr. Kraut** Well, those are committees. You know, those are staff functions to some degree. Because almost on every center we have, we have a board could be two or three or four physicians. I'm not been aware of one that's a single board member.

**Applicant** There'll be separate boards.

**Mr. Kraut** That's something you guys in the review of this.

**Ms. Ngwashi** I'd like to just confirm. My name is Marthe Ngwashi. I'm an attorney at the Department of Health. I'd like you to confirm the organizational structure. You have a corporation, a business corporation, right?

**Mr. Kraut** It's an LLC.

**Applicant** It's an LLC.

**Ms. Ngwashi** An LLC.

**Ms. Ngwashi** It's a single member LLC?

**Applicant** Single member LLC.

**Ms. Ngwashi** Is there any other entity that is associated with that LLC that's seeking the license, or no?

**Applicant** No.

**Ms. Ngwashi** It's an individual that's the member.

**Applicant** Correct.

**Ms. Ngwashi** I think I need you to rephrase the question in terms of whether or not there would be any other governance structure.

**Mr. Kraut** The question I'm asking is what is the governance structure? I guess what I'm trying to get at is and this is an essence of the CMS regulation. How you hold yourself out to the public, who is accountable for the care that you're receiving because and if there is a... You know, I'm assuming you'll have legal separation obviously of the corporations with two LLCs. If something happens in let's say you do terminal cleaning on Sunday and Monday it goes back to the other corporation. They did a poor job of terminal cleaning of the O.R. There's an infection the next day with a different corporation. What we don't want to have is one corporation suing the other. I don't know how your med mal since it's all related entities. Usually, these agreements are two separate entities. They're not co-located by the same ownership group. That's why the regulation was developed to permit maximum use of facilities, which is fine. I mean, I don't see an issue with that. It's how you hold yourself out to the public. I was led to believe that CMS requires dedicated signage and dedicated doors for entry so it's clear to the public. That may be an anachronistic understanding of it. I'm not suggesting... Those are the kind of questions I'm trying to kind of understand that that really is how this is going. Can I ask you, why didn't you just make the center a multi-specialty center?

**Applicant** We have several surgeons that would like to become partners in the Hudson Yards Surgery Center. We thought that this would be a better business proposal to move forward.

**Mr. Kraut** Oh, you didn't want to cut them in on the money that was coming out of the other one.

**Applicant** It's just cleaner.

**Mr. Kraut** Well, no, I understand.

**Applicant** In respect to your question, we take what we do very, very seriously. We consider it a privilege to be granted these licenses. In terms of infection control or things like that, these places are cleaned around the clock.

**Mr. Kraut** I'm sure they are. I have no suggestion. Because this is so unusual, we just want to have clarity really. That's really what we're trying to get at right now.

**Mr. Kraut** That was the summit substance of my question.

**Ms. Glock** I just want to make a note that the department did place a condition on the project that states the entities must operate at two separate times with no overlap. The sign is much clearly to note the issue that you're speaking about separate and distinct with the hours of operation that the entrance cannot disrupt any other entities clinical space and that the records have to be maintained separately. We did build in some of those requirements in the conditions.

**Mr. Robinson** Good discussion and appreciate the ability to clarify things.

**Mr. Robinson** Anybody else from the committee have any questions?

**Mr. Robinson** Any other comments that you wish to make as the applicants?

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** We're going to call the question.

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** That motion carries.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** I understand a number of people have arrived here in order to make comments around the Sunset application. We recognize that you're here. We are actually waiting for a member of the committee who has also got some questions around this application to arrive. When everybody is here, we'll call the application. Thank you for your patience.

**Mr. Robinson** Application 231380B, Mohawk Valley Surgery Center in Oneida County. This is to establish and construct a multi-specialty ambulatory surgery center at 601 State Street in Utica. Note that a five-year limited life was noted on the exhibit in error. The department is recommending contingent approval. Essentially, this is a hospital sponsored application and that's the reason for the change.

**Mr. Robinson** Motion, please.

**Mr. Robinson** Mr. Thomas.

**Mr. Robinson** Second, Dr. Kalkut.

**Mr. Robinson** Ms. Glock.

**Ms. Glock** Thank you.

**Ms. Glock** Mohawk Valley's Surgery Center is an existing LLC. This application is seeking approval to establish and construct and Article 28 Ambulatory Surgery Center that will specialize in dentistry, general surgery, obstetrics, and a number of other specialties as outlined in the exhibit. The center will have four operating rooms. It'll be in leased space, which will be across the street from the new Wynn Hospital. Mohawk Valley Health Services is the sole member of Mohawk Valley of MBV, and also the service area is really consisting of Oneida County, which is a health professional shortage area for primary care, dental and mental health. It's also located within a medically underserved area. They are projecting about 3,200 procedures by year three with Medicaid, a 20%, and charity care at 2%. This application really represents a plan for Mohawk Valley Health System to move a number of their outpatient cases to this new ambulatory surgery center. The department has reviewed the application in recommending approval with contingencies and conditions.

**Mr. Robinson** Great.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions on this application?

**Mr. Robinson** Mr. Thomas.

**Mr. Thomas** Hugh Thomas, member to counsel. Shelly, just a couple of quick questions. That's a new hospital, correct?

**Ms. Glock** Correct. That's a new hospital in Oneida County.

**Mr. Thomas** Not open yet?

**Ms. Glock** It did open. My understanding is it opened over the weekend I believe.

**Mr. Thomas** That was funded with a huge transformation grant.

**Ms. Glock** Yes.

**Mr. Thomas** There's a commitment to reduce the capacity in that hospital and to move ambulatory cases out.

**Ms. Glock** When they planned the hospital this was part of the plan to move it out.

**Mr. Thomas** Last question. Years ago, you may not remember this. We had a long conversation here about a surgery center in Oneida County that was approved over the objection of Mohawk Valley. Is that one of the three that's listed? I'm just curious where these 2,300 cases are coming from.

**Ms. Glock** I'm not sure.

**Mr. Thomas** They predate you.

**Ms. Glock** I don't recall that conversation.

**Mr. Thomas** Thank you.

**Mr. Robinson** Other questions from the committee?

**Mr. Robinson** Applicant questions only.

**Mr. Robinson** Thank you.

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** Hearing none I'll call it.

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** Application 221277E, Medicare LLC in Kings County. This is a diagnostic and treatment center transfer 100% membership interest from the current sole and withdrawing member to a new member LLC. The department is recommending approval with conditions.

**Mr. Robinson** Motion, Dr. Berliner.

**Mr. Robinson** Second, Dr. Kalkut.

**Mr. Robinson** Ms. Glock.

**Ms. Glock** Thank you.

**Ms. Glock** Medicare LLC is seeking approval to transfer 100% of its membership interest in the Article 28 Diagnostic and Treatment Center located in Brooklyn and to transfer that membership to Lafayette Avenue Care LLC. The center provides medical services, primary care and other medical specialties. There are no planned changes to the currently provided services. You can see in the exhibit the before and after change in membership, the ownership of Lafayette Avenue Care are two individuals, each at 50%. Mordechai Getz is the CEO of Level up M.D. Urgent Care. He has declared ownership interest in several health care facilities. They have identified a medical director. There's no need review on this based under Public Health Law because it's a membership transfer. We have reviewed the application and are recommending approval with conditions.

**Mr. Robinson** Thank you.

**Mr. Robinson** Committee questions?

**Mr. Robinson** Applicant questions.

**Mr. Robinson** Thank you.

**Mr. Robinson** Anybody from the public on this application?

**Mr. Robinson** Hearing none call the question.

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** That motion carries.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** I am moving now to certificates.

**Mr. Robinson** The first, the Foundation for Catholic Health in Erie County. The department is recommending approval.



**Mr. Robinson** A motion, please.

**Mr. Robinson** Dr. Berliner.

**Mr. Robinson** Second, Mr. Thomas.

**Mr. Robinson** Anything on this council?

**Mr. Robinson** Anybody have any questions; public, committee?

**Mr. Robinson** Call the question.

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** That motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** You don't have to call a conflict on this one, do you?

**Mr. Thomas** Hugh Thomas, member of the council.

**Mr. Robinson** You going to declare an interest?

**Mr. Thomas** I'm going to declare an interest.

**Mr. Robinson** I got that.

**Mr. Robinson** Restated certificate of incorporation Rochester General Health Hospital Association Inc in Monroe County. The department is recommending approval.

**Mr. Robinson** Motion, please.

**Mr. Robinson** Dr. Berliner.

**Mr. Robinson** Second, Dr. Kalkut.

**Mr. Robinson** Anybody wanting to speak on this application?

**Mr. Robinson** I'll call the question.

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** That carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** Noting an interest by Mr. Thomas.

**Mr. Robinson** Certificate of assumed name. VJJ Holding Company LLC in Suffolk County. The department recommends approval.

**Mr. Robinson** Motion, please.

**Mr. Robinson** Dr. Berliner.

**Mr. Robinson** Second, Dr. Kalkut.

**Mr. Robinson** Anything on this one, Councilor?

**Mr. Robinson** No.

**Mr. Robinson** Thank you.

**Mr. Robinson** Any questions, committee, public?

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** Motion carries.

**Mr. Robinson** This is a certificate of dissolution for DOJ Dialysis Center Corp. Department recommends approval.

**Mr. Robinson** Motion, Mr. Thomas.

**Mr. Robinson** Second, Dr. Berliner.

**Mr. Robinson** Anything, Counselor?

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions, committee, public?

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Opposed?

**Mr. Robinson** Carries.

**Mr. Robinson** Wartburg Nursing Home Inc. The Department recommends approval.

**Mr. Robinson** Motion, please.

**Mr. Robinson** Dr. Berliner.

**Mr. Robinson** Second, Dr. Kalkut.

**Mr. Robinson** Anything, Counselor?

**Mr. Robinson** Questions from the public, from the committee?

**Mr. Robinson** Calling the question.

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Opposed?

**Mr. Robinson** That carries.

**Mr. Robinson** Finally, Greater Harlem Nursing and Rehabilitation Center. Here the department also recommends approval.

**Mr. Robinson** Motion, please.

**Mr. Robinson** Dr. Kalkut.

**Mr. Robinson** Second, Dr. Berliner.

**Mr. Robinson** Nothing from counsel.

**Mr. Robinson** Anybody on the committee?

**Mr. Robinson** Anybody in the public?

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** That motion carries.

**Mr. Kraut** We have quorum to do Sunset Park. We're going to have to do that now. If we do the NYU and you excuse yourself, we lose quorum.

**Mr. Robinson** Well, we can get a sense of the committee with a vote.

**Mr. Kraut** We will do that without a vote. We can't even discuss it if Gary walks out is what our counsel is telling us.

**Mr. Robinson** Is that true?

**Mr. Kraut** We can't vote. We're not supposed to discuss without a quorum. Could we discuss with no vote?

**Mr. Kraut** We're waiting for Ann. Ann's in the lobby. Let's hope the elevators are working. When Ms. Monroe comes into the room let's do NYU first and then we'll do Sunset last and then that'll be the agenda. We're going to take a two-minute break. It's like planning a wedding. You hope for the best. Your guest list doesn't always... It's like the bride has to show up.

**Mr. Robinson** Gentlemen, the wonderful Ms. Ann Monroe. Can we have a round of applause, please?

**All** (Clapping)

**Mr. Robinson** Thank you.

**Mr. Robinson** We have three applications to consider. Two involving NYU Langone and one Sunset we're going to take because of quorum issues. I'm going to move the NYU issues next.

**Mr. Robinson** Dr. Kalkut if you would.

**Mr. Robinson** Application 2331325C, NYU Langone Hospitals in Nassau County. Noting a conflict and recusal by Dr. Kalkut, who has left the room. This is to certify a new hospital extension clinic at 210 Crossways Park Drive Woodbury and perform renovations to create an ambulatory radiation oncology facility. The department is recommending approval with conditions and contingencies.

**Mr. Robinson** A motion, please.

**Mr. Robinson** Mr. Thomas.

**Mr. Robinson** Do I have a second?

**Mr. Robinson** A second by Ms. Monroe further validating her presence here.

**Mr. Robinson** Ms. Glock.

**Ms. Glock** Thank you.

**Ms. Glock** NYU Langone Hospital is an 813 bed not for profit hospital with four divisions. This application is requesting approval of an ambulatory radiation oncology extension clinic to be located in Woodbury, New York, Nassau County. The new clinic will be housed in leased space and will accommodate one new linear accelerator, one CT scanner and a number of exam rooms and the associated support spaces. Currently, NYU provides radiation oncology services at two offices in Mineola. One at their NYU Langone Hospital, Long Island campus and the other one on Old County Road. The primary service area for the project is Nassau County, but there will be some patients traveling from Suffolk and Queens. The practice project will increase capacity, reduce wait times, and add the capacity to treat additional patients. The applicant is projecting 2,772 visits in the first year, 3346 by year, with 16% Medicaid and a half a percent of charity care for both years. The total project cost will be met with equity. The department has reviewed the application and is recommending approval with conditions and contingencies.

**Mr. Robinson** Thank you.

**Mr. Robinson** Questions from the committee?

**Mr. Robinson** Dr. Berliner.

**Dr. Berliner** Do we still have need thresholds?

**Ms. Glock** We do. Thank you for that question. We do have a need methodology that is based on cancer rates. You can see it in the exhibit on Page 4. The need in this region is estimated to be about 26. I'm sorry. Those are the existing. Remaining is about 18. This would add one. There is another application for NYU to do another oncology radiation oncology clinic which will come at a future meeting and that is requesting. Still plenty of need based on this calculation.

**Mr. Robinson** It should be noted that the private practicing non-CON related are not counted at all at this point. I think it's time for us to relook at that methodology. I thank you for that clarification.

**Mr. Robinson** Other questions from the committee?

**Mr. Robinson** Applicant, anything?

**Mr. Robinson** I can't see anybody.

**Mr. Robinson** Questions only.

**Mr. Robinson** Thank you.

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** All in favor?

**Mr. Robinson** Any opposed?

**Mr. Robinson** The motion carries.

**Mr. Robinson** Thank you.

**Mr. Robinson** A second application noting again the conflict and recusal by Dr. Kalkut, who remains out of the room. Application 231103C, NYU Langone Hospital, Brooklyn, which as you know, is in Kings County. This is to certify an adult cardiac surgery service. The department is recommending approval with a condition and a contingency.

**Mr. Robinson** Motion, please.

**Mr. Robinson** Dr. Berliner.

**Mr. Robinson** Second, Mr. Thomas.

**Mr. Robinson** Ms. Glock.

**Ms. Glock** Thank you.

**Ms. Glock** NYU Langone Hospital is a 2,000 plus bed not for profit hospital with four divisions. This application is requesting approval for the certification of adult cardiac surgery services at NYU Langone Hospital Brooklyn, which is a 404-bed facility in Sunset Park. Upon implementation of the proposed cardiac surgery program, NYU Langone Hospital will be capable of providing a full range of cardiac related services at the Brooklyn Hospital. This is a medically underserved area and a health professional shortage area for primary care. The applicant is projecting about 200 procedures in the first year and 326 procedures by the third year, with almost 50%, 48.7% Medicaid and 2% charity care. The preponderance of these cases is expected to comprise of cases that are originating in Brooklyn, but currently traveling to NYU's main campus in Manhattan. You can see in the exhibit that outmigration of cardiac surgery cases for Brooklyn residents. You will also note that there are other cardiac surgery programs in Kings County. Commodities is about 1.6 miles from NYU Langone, Brooklyn, and New York Presbyterian. Brooklyn Methodist is about 3.4 miles away. The department's looked at this application. We've had discussions with many oddities about the impact of the application on their program. While the impact is not expected to be zero, the vast majority of cases projected for NYU Langone, Brooklyn are they're already being treated within the NYU system. Existing cardiac surgery referral patterns are expected to continue, but also is going to help decrease patient travel time and increase greater continuity of care. The cardiac surgery program will be implemented under the direction of the Department of Cardiothoracic Surgery at the NYU Grossman School of Medicine through NYU Langone Heart Program. NYU Langone Manhattan Cardiac Program was implemented under this direction. The proposed cardiac surgery program in Brooklyn will implement the same shared leadership, policies, and procedures. NYU Langone Hospital Brooklyn already has the existing OR and ICU infrastructure and the capacity to accommodate the cardiac surgery patients. Cardiac surgeons will be provided by NYU Langone Hospital in Manhattan. We looked at the quality of the existing NYU Cardiac Surgery program. NYU Langone Tisch Manhattan is a high-volume cardiac surgery center and PCI with good outcomes. NYU Langone, Long Island, which is the former Winthrop University Hospital has lower cardiac surgery volumes but maintains volumes well above the regulatory minimum volume thresholds. Overall, there are no concerns about the PCI or the cardiac surgery programs at NYU Langone, Tisch or NYU Long Island. The total project costs will be met with cash. The department based upon a review of compliance, need and financial feasibility is recommending approval with a contingency and a condition.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** Questions from the committee?

**Mr. Robinson** Mr. Lawrence.

**Mr. Lawrence** Harvey Lawrence, a member of the PHHPC. While I as a consumer, I think this is great to have additional cardiac surgery available in Brooklyn. I'm just a little concerned in terms of the impact on the other institutions. The concentration in any one area, especially given what I see is the declining cases at both Maimonides and New York Methodist and SUNY Downstate. What can be done to, I guess, improve their capabilities so that it's not a concentration in one area that is more diverse and there's more opportunities for people in Brooklyn to be served by the other hospitals.

**Ms. Glock** Thank you for the question.

**Ms. Glock** I think in note in the exhibit, there is a great amount of outmigration, right? There's nothing stopping Maimonides or New York from also trying to go after those cases that are going to Manhattan. Under regulation under 709.14, there are regulations that state that a facility that's proposing to initiate an adult cardiac surgery must document an annual volume of 300 cases, which this proposal does meet that with 36 emergency PCIs within two years. That was the criteria that was established in that regulation. It also eliminated the need for the existing cardiac surgery programs in the area to have to maintain 300 cases. Currently, we're looking at a minimum of 100 cases that we would like to see for that correlation between quality and volume. While these cases right now are the cases that they're projecting the preponderance of them are patients within the NYU system who are having to travel to Manhattan, Brooklyn residents to receive services. I don't know if I've answered your question but it's really about giving those Brooklyn residents who choose to have cardiac surgery at NYU the option to do so in Brooklyn. We don't really see that it's going to impact Maimonides at a level that would threaten quality of their program to go below that 100 cases.

**Mr. Lawrence** I think you did answer the question and maybe it was an unfair question. I'm asking more in terms of health policy, in terms of really... Outmigration has always been a problem in Brooklyn. People are crossing the rivers to receive care, especially high-level care in Manhattan and at the larger hospitals. What happens is a consequence of that is that many of our hospitals are underperforming financially and are threatened financially. From a health policy perspective, my question is essentially what can be done to help those hospitals? To either do better or have a greater opportunity of recapturing some of the outmigration that their institutions. I don't know if that's a question for you or for the department in general, but probably for that department.

**Mr. Robinson** Ann.

**Ms. Monroe** I think I would just note that, I mean, the change was made in the regulation back in 2019 to allow new entrants into the market. The department, which I'm sure you're aware of, does financially provide some operating assistance to Maimonides. Certainly, took a very close look at this application and certainly want to maintain the financial viability of all of the programs in Brooklyn. We feel that with the outmigration and number of cases that NYU Langone is losing to their Manhattan facility for lack of being able to provide this service that there is really going to be minimal impact.

**Mr. Robinson** Mr. Lawrence, I think one not one other way of looking at least the way I'm looking at it. I can't say this is correct. It's almost like we brought Manhattan to Brooklyn, right? Instead of having patients go there NYU is moving apart of its program to Brooklyn in order to retain those patients there. I think this is actually going to result in more patients remaining in Brooklyn and getting care in Brooklyn. That's one of the reasons I favor the application.

**Mr. Lawrence** So do I for that reason because it gives customers a choice. I'm also thinking about the institutions in Brooklyn, that are Brooklyn based that are struggling. You're already providing support, as you mentioned, to Maimonides. It's an already fragile system. The point is, you know, what becomes the tipping point?

**Mr. Robinson** But the question is, does this actually strengthen the fragile system or not? I would almost argue that you're strengthening it by doing something like this as opposed to not doing it.

**Mr. Kraut** In all fairness... I mean, you know, Harvey Lawrence works in Brooklyn. He understands the fragility. You just used the term of the health care system. We have a preponderance of safety net institutions that have significant support from the state. We're going to be confronted with applications like this where to make the point an applicant in Brooklyn is trying to strengthen its ability to serve Brooklyn, reduce outmigration, bring care closer to home. Every action has some reaction. The reaction, I think, Mr. Harvey clearly stated, is, yes, by strengthening one hospital the belief is you weaken another. The fact is, when we get beyond the application itself it stands on its merits. We'll see how we vote. I think we'd agree that it's a positive that we're bringing care both here. 70% leave Brooklyn. Maybe more people will stay here. I think this is just a... It's certainly outside of our purview. It is critical to the future of the health care system to deal with those issues. I think this is not the only time we're going to deal with that. We've dealt with it in the past. We have other hospitals coming in. If you go back to the old days. That's not too old. The same arguments. The dynamics in health care that everybody has to evolve. In some way, competition is helping because it makes people pay attention. To your point is, if they don't have the resources to respond and I think this is just one of the problems here. Again, I'm not speaking against the application. If we look at it on its merits, I wish we had...

**Mr. Lawrence** I'm not speaking against the application either. I mean, I support the application. I'm just concerned about the broader context from a health policy perspective, especially knowing the fragile condition of so many of the hospitals.

**Mr. Robinson** I guess in response to that, I think what we would say to the department is please take into account these kinds of issues when you assess applications that are coming through. I mean, in some ways it's addressing community need. If we're thoughtful about it, we will be able to take into account and hopefully anticipate the kinds of unforeseen consequences that might come from doing the right thing.

**Mr. Lawrence** Yes, and also from a policy perspective, what are some of the other interventions that can be made so that we can support the other Brooklyn based, community-based institutions to perform, either perform better or be more competitive, while also in terms of whatever health dollars that are being provided to them.

**Mr. Robinson** Great, great comments.

**Mr. Robinson** Ms. Monroe.

**Ms. Monroe** I want to echo Mr. Lawrence's comment and also say that I thought at a previous meeting we had asked the department to give us the landscape of who else was there and providing these services as part of the application.

**Mr. Robinson** They did on this one. If you recall, Ms. Glock did talk about the other cardiac surgery programs in the community.

**Ms. Monroe** Mr. Lawrence, did that not address your concern?

**Mr. Lawrence** I support the application.

**Ms. Monroe** I know.

**Mr. Lawrence** I'm just raising the bigger issue, which is that, you know, to Mr. Robinson's point, it is great to have customers have a choice. I think competition is good as well. Also,



I understand that there are institutions that are Brooklyn based that are struggling. The outmigration is not something new. It's been happening for decades. Essentially, what's happening is the Manhattan based hospitals coming into Brooklyn. Again, provide valuable services. At some point, what do we do with those institutions that are there in terms of either retooling, helping to get them in a more competitive place? They are not operating on the positive margin. Most of them. Because in most instances they are serving people who primarily are poor and don't have commercial insurance. A lot of the procedures that they are being asked to perform and they don't get the same level of reimbursement for. How do you create a more level playing field for those institutions? That's what I'm asking. Not about this application. Maybe I'm hijacking the application to make this point, but I think it's one that we need to address from a public policy.

**Mr. Robinson** I think having this kind of conversation at the committee and the council level is very important. I think sending a signal to the department about how we feel about this is important because I think it is an additional lens through which we can look at other applications when they come through.

**Mr. Kraut** If I could just put a pin in the conversation because I just got an alert that the Governor announced the launching of a commission on the future of health care in New York to address issues regarding health care costs and the delivery system. Let's put a pin in this. When we meet on the 16th, we'll ask the Commissioner to give us an update on this commission.

**Mr. Lawrence** That's very good.

**Mr. Robinson** Thank you for the comments.

**Mr. Robinson** Other questions from the committee?

**Mr. Robinson** Anything from the applicant?

**Mr. Robinson** Questions only.

**Mr. Robinson** Anybody from the public wishing to speak on this application?

**Mr. Robinson** I'm going to call the question.

**Mr. Robinson** All in favor?

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Motion carries.

**Mr. Robinson** Have Dr. Kalkut return.

**Mr. Robinson** Calling application 231044E, Sunset SNF Operations LLC doing business as Sunset Lake Center for Rehabilitation and Nursing. This is located in Sullivan County. This is to establish Sunset SNF Operations LLC as the new operator of Sullivan County Adult Care Center, which is a 146-bed residential health care facility currently operated by

the County of Sullivan at 256 Sunset Lake Road in Liberty, New York. The department is recommending approval with a condition and contingencies.

**Mr. Robinson** May I have a motion, please?

**Mr. Robinson** Dr. Berliner.

**Mr. Robinson** A second, Dr. Kalkut.

**Mr. Robinson** That's back to you, Mr. Furnish, right?

**Mr. Furnish** Yes.

**Mr. Furnish** Mark Furnish with the Department of Health. Sunset SNF Operations request approval to be established as the new operator of the Sullivan County Adult Day Care Center at Sullivan County Nursing Home. This is 146 beds not for profit with a 17 registered licensed adult day care program. The nursing home and the adult day care center currently leased space in Sullivan County. Upon approval, the facility will be named the Sunset Lake Center for Rehabilitation and Nursing. On January 9th of 2023, the County of Sullivan entered into a facility transition agreement for the acquisition of the facility for assumptions of liabilities of the current applicant, estimated at approximately \$100,000,000. The applicant will lease the property from Sunset Lake Local Development Corp, which is a non for-profit entity unrelated to the applicant. Lease payment is \$800,000 a year with a 2% per year increase. This is an arm length rental agreement. However, they've been provided to letters from two New York State licensed realtors attesting to the reasonableness of the rent rate. If approved, the applicant will enter into a new consulting and service agreement with Sunset Lakes Consulting. One of the contingencies is the department must read and approve the new consulting agreement. The current consulting agreement will terminate once it's transferred over, and all approvals are met. It's important to note that while there are currently two consulting agreement in place with the current operator Sullivan County is responsible for all statutory and regulatory operations of the nursing home consulting agreements. All consulting agreements must have proper safeguards in place to prevent an illegal delegation of authority. Also, the applicants pass character and competence. They pass financial sustainability. Need no change beds or services as a result of this application. With that, we recommend continued approval. Thank you.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** Questions from members of the committee?

**Mr. Robinson** Ms. Monroe.

**Ms. Monroe** I do have several questions about this application. Some of it is just that I wasn't able to figure it out. Maybe the applicant.

**Mr. Robinson** We can ask the applicant to come forward if that would help.

**Ms. Monroe** Maybe they could come forward.

**Mr. Robinson** Could we ask the applicant to come forward.

**Ms. Monroe** We often don't see such a passionate response to a request for CON, especially from families. I want to take the time that it might take a few minutes to discuss this. Could you introduce yourselves, please?

**Mr. Cicero** Frank Cicero, consultant to the applicant.

**Ms. Monroe** Katie, your role in the new operation is?

**Applicant** I work for Infinite Care. I'm the Regional Director of Operations. I oversee three nursing homes. I oversee the administrators.

**Ms. Monroe** Would you lay out the timeline again? In terms of the one star what period of time was the home reviewed over what period of time that resulted in a one star?

**Mr. Cicero** Ms. Monroe, the facility, if you go back in time in 2018 was five stars. It declined after that time. It received a one-star rating. Its first time for a one-star rating was in 2021 as a result of events that occurred in the Summer and Spring of 2021. The one star rating was issued right after that time prior to the applicant.

**Ms. Monroe** That was my question.

**Mr. Cicero** Prior to the individuals becoming consultants.

**Ms. Monroe** I mean, a one star should... Every family should raise lots of concerns. I'm trying to figure out who was managing the nursing home when they got one star? Was it still the county? Is it Infinity Care?

**Mr. Cicero** The county is the operator and manager if you will today. This entity became a consulting entity in October of 2021. The events that led to the one-star rating occurred before that time.

**Ms. Monroe** Before Infinity came in.

**Mr. Cicero** Before Infinite came in, correct.

**Ms. Monroe** Okay.

**Ms. Monroe** That one star, as scary as it is, is not the accountability of Infinity Care.

**Mr. Cicero** I don't think you could say even... Ms. Perez can talk more about that in terms of what's done there. To say that a consultant would be responsible for it, I think would not be right. Certainly, the consultant's been there. I think she can talk about what they've done while they've been there. The events that led to the one-star rating occurred before the contract was put in place for the consultant.

**Ms. Monroe** The fact that there is a one star is not relevant in this transaction, is that correct?

**Mr. Robinson** Can I get Mr. Furnish to just make a comment? This is responsive, I think.

**Mr. Furnish** Yes. I just want to make clear that regardless of a consulting service agreement or not, which there they've indicated to us is not...it was prior to the one-star

rating. It's the operator is the county at this point, Sullivan County. They, in the eyes of the Department of Health, are on the hook for all of the powers, the clinical, the financial, everything. Now, I can read out in the regulation where it states that out. However, you can hire a consultant to give you advice and things of that nature. However, in the eyes of the Department of Health, the operator is the person that's on the hook for those decisions. I just want to make that clear that even if and in this case it's not true, but even if whoever had a consulting agreement wouldn't be responsible for the decisions made.

**Ms. Monroe** I'm responding to the many letters that we got that equated Infinity Care coming in and a one-star rating. What I'm learning is that the one-star rating came before Infinity Care came in.

**Mr. Cicero** The rating was issued right at the time that they came in. It was the result of the events that occurred before they were there.

**Ms. Monroe** Before they came in.

**Mr. Cicero** Correct.

**Ms. Monroe** Since they've been here, you've had a consulting agreement. I've been a consultant. You've been active on the floors. There's been a lot of visibility. Has Infinity hired people, or have you referred to the county to hire people?

**Applicant** That's something that we worked on very hard. We have hired people. We've worked with the county for the past two years trying to get staff in. Obviously, working with the county sometimes our hands are tied because we do things differently, or it might take a little bit longer for the county to bring people in, as it would for us. We went from a one star in staffing to a three star that just came out. We have hired numerous amounts of employees.

**Ms. Monroe** I'm wondering, as a consultant, that's part of your duties is to hire these folks? That sounds more like an operator.

**Applicant** To help the county to guide them to hire staff, to introduce them to new agencies, to introduce them to new ways to get employees in. We have done that. We've helped encourage them to change the way that they do orientation so that we can get them on the floor faster. We collaborate now with Sullivan County BOCES with a CNA class. We've also brought the Sullivan County LPN course into the facility so that they do clinicals there. We've shown them different ways that you can hire staff and get things done a little bit differently than the way they were doing them.

**Ms. Monroe** One more question. Assuming this goes forward, you will be both the operator and the consultants? Is that accurate? You'll have a consulting agreement and you'll be the operator.

**Mr. Cicero** It's correct. There will be a consulting agreement for back-office type of functions, not for clinical functions.

**Ms. Monroe** Who will do that work?

**Applicant** How it works is we'll have an administrator on record, which we do now. She'll remain the administrator on record. We'll have back office for billing for different types of

consultant things. We have a regional nurse consultant that will come around that will help educate and guide the systems and the tools that they need to function.

**Mr. Robinson** If this application is approved, the county will no longer be the operator. These folks will be.

**Ms. Monroe** They will have another---

**Mr. Kraut** Well, the consulting.

**Mr. Robinson** They can do what they want in terms of getting a consultant.

**Mr. Kraut** Let's ask names. You're a 5% owner?

**Applicant** Yes.

**Mr. Kraut** Esther Kline is a 95%.

**Applicant** Correct.

**Mr. Kraut** You were the two people who will be accountable for the operations. Forget about how you structure it, how you do it. You're going to be accountable. Is that correct?

**Applicant** Correct.

**Mr. Kraut** Currently under the consulting arrangements do either one of you receive a salary?

**Applicant** I receive a salary under Infinite Care.

**Mr. Kraut** No, no, no. From nursing home?

**Mr. Kraut** Because this is a difference with a distinction. I'll get to it in a moment. You're claiming you guys are consultants. You advise the county. You're limited to the resources the county provides you. You are hired to be the administrator of record through a consulting arrangement. Is that correct?

**Applicant** I'm not the administrator of record.

**Mr. Kraut** Who's the administrator of record today or when they got the one-star rating?

**Applicant** That was Bert Cohn.

**Mr. Kraut** That person is no longer associated.

**Applicant** No.

**Mr. Kraut** Just to clear that up. You or Ester don't receive a salary today. You're not getting a W-2 from the county at all?

**Applicant** No.

**Mr. Kraut** When the county decided to enter into this agreement was there a public hearing at the legislature?

**Applicant** Yes.

**Mr. Kraut** Was their people from the public who came forth to discuss this with the legislature? And in light of all the things I'm sure we've heard, they heard, they decided this is in the best interests of the community to essentially for the county to divest ownership and to give it to private ownership to try to do a better job. I suspect that was. It was probably an economic... Let's not be foolish here. I mean, this is also consistent with what most county owned nursing homes are doing around the state. They are divesting because of the challenges that are presented in doing this. We've increases the regulatory, the staffing requirements. It's good to see that you at least were able to hire, because I know how difficult the labor forces issue up where you are.

**Mr. Cicero** Just for the record and to answer part of your question, in the last three fiscally reported years, completed years, the county lost \$28,000,000 on the operations of this nursing home.

**Ms. Monroe** If I could finish my last question. When the county did this did they have more than one bidder?

**Applicant** I know I was at those meetings. I know there were a few nursing homes that were bidding for that and Infinite Care was chosen.

**Ms. Monroe** You were not the only.

**Applicant** No, no, no. I don't know how many. It was either four or five. I don't remember. I remember the meetings.

**Ms. Monroe** Lastly, if this does not pass...I know you can't speak for the county. What do you think their intentions are with this facility?

**Mr. Cicero** I don't think we know what the county's intentions are. There's a member of the local development corporation who will speak during the public speaking part of this. He may have a comment on that. I know they've lost \$28,000,000. If they had to go through this process again it's possible, they would close. We saw something like that at this council six or seven years ago with John J. Foley facility and Suffolk County. Folks came here and rightly so were not happy with the care that was given there at that time but said that there was no way it would close and it closed shortly after. I can't speak for Sullivan County, but with that loss and what they've intended to do here it's possible that it would close.

**Ms. Monroe** Well, after having gone through all of that process of an RFP and public bidding and choosing someone, I would guess this is their belief that it's the right way to go for the people of that county.

**Mr. Cicero** That's what they've expressed.

**Ms. Monroe** Yes.

**Mr. Robinson** Any other questions from members of the committee?

**Mr. Robinson** Mr. La Rue.

**Mr. La Rue** First, I have a comment on something I think that the... If it's in the boundaries of the Public Health and Health Planning Council, it's something we should look at. There is concerns about these consulting agreements and the responsibilities that are delegated and what's actually happening within the nursing homes. My question to the department is what is the opportunity or the ability to enforce, monitor or audit the compliance with the consulting agreement that they actually haven't gone and crossed the threshold that's prohibited by regulation?

**Mr. Robinson** Mr. Furnish.

**Mr. Furnish** Sure.

**Mr. Furnish** We look at the...The licensure side looks at consulting agreements as part of a CON application. Now, that's not to say that once a license is granted a new consulting agreement or something can come from a currently operated nursing home to a new person. The licensure would not look at that. That would be a function of surveillance and operations of the surveillance teams going in and looking to see if there's an illegal delegation of authority. What is an illegal delegation of authority? It's giving complete power and control over the appointment of dismissal of management level employees and medical staff, approval of operating and capital budgets, adoption of approval of hospital operating policies and procedures, approval. I'm saying not suggestion, but the actual approval power of a certificate of need application filed on behalf of a hospital, nursing home. Approval of debt necessary to finance the cost of compliance with operations or physical plant standards. Approval of hospital or nursing home contracts for management or for clinical services, the actual approval of that. The approval of settlements of administrative proceedings or litigation in which the hospital or nursing home as party except approval by members of not-for-profit corporations for settlement of litigation. If we saw any of that or we noticed that they were sharing in revenues, which is another thing only established operators could do, we would then take the proper steps. Now, I also want to mention that our Regulation 600.5 gives PHHPC the power to revoke, limit or annul approvals of establishment if the operator has been guilty of fraud or to see a recurring such approval of establishment or has made statements or furnish information in support of the application which were not true, accurate or complete in any material respect. If the department determined and found that a illegal delegation of authority occurred, conceivably PHHPC could come in and pull their establishment completely. That's the steps we were taking. Now, we don't see very much of that. I mean, I don't have any memory of that happening in the recent time. However, those are the options available and what we look for, what the Department of Health looks for when looking for an illegal delegation of authority.

**Mr. La Rue** One of the reasons I ask is because of the change in the character and competency approach. There is a backlog of nursing home applications. Some of these consulting agreements have been going on for quite some time. On its face it appears very difficult to tell that there's someone else actually responsible for the facility. I'd be interested in knowing at some point we have a conversation about how that's monitored or whether that's actually occurring that they're actually running the facility versus the actual owner of the facility, the responsible party.

**Mr. Kraut** I mean, I guess during survey. Again, I'm going to take it out from this application. We have this approach where we have, I don't know, eighty applications waiting. We don't move on it for a variety of valid reasons. Every action has an equal and opposite reaction. The reaction now is because we're unable to adjudicate those applications. We have this other problem. That was one problem that caused it in the other. It's a valid issue. This is where the survey, the office of the state ombudsman, I mean, these are where I would suggest if you were trying to address the concern is I'd like the ombudsman to pay particular attention to those facilities under consulting agreements. I want them to also pay attention to all facilities. I just wouldn't want to differentiate.

**Mr. La Rue** My question really isn't related to this application.

**Mr. Kraut** It's not about this application.

**Mr. La Rue** I do have specific question on this. Because the other issue to your equal opposite action and reaction is you change the character and competency rules. The idea is, okay, let's find owners that are related that are not ones who currently are listed on a facility that would pass character and competent. I'm not suggesting that in this application. I'm going to ask because this lists in Esther Klein, who's not here as the 95% owner. When you read the press release and could be true. Could not be true. The person who's primarily speaking on behalf of this entity is Sol Klein as the managing partner or director of Infant Care. It just draws to question who owns the facility, who's going to operate the facility and who's role. Because all of the press releases are from Sol Klein. This has 95% of the ownership with Esther. There's not necessarily anything wrong with that. I'm just asking.

**Mr. Robinson** Can you respond to that?

**Mr. Cicero** Certainly, and Sol Cline is the husband of Esther Cline. Let's speak about Esther Klein. First of all, she apologizes to the members of this committee for not being able to be here today. She is a childcare counselor. We determined that Ms. Perez could attend. We wanted to make sure that one member could attend. Ms. Klein is taking care of children today from a counseling standpoint and did not want to cancel that. Katy will speak in a moment about her relationship with Ms. Klein and how they work together. As you can see from the staff report, Ms. Klein has been involved with facilities for seven years now, has a star rating and is directly involved as Ms. Perez will tell you, has star ratings that are as good or better than anyone we've seen here. She will be directly involved in this facility and is directly involved in her consulting entity. This is not a case the same as some others that we've may have read about. She is directly involved.

**Mr. Cicero** Could you speak to your involvement?

**Applicant** I'll just tell you a little bit about myself. I have been in long term care for thirty years and I actually spent twenty-eight of those years in one facility. I was the administrator and record for about twenty-five of those years. That building, which is one of the buildings that we oversee, was just nominated as Business of the Year for Ulster County, which for a nursing home to get business of the year is a pretty big thing for a county. I was the administrator there up until 2018 when Infinite Care brought that nursing home. I chose to stay with Infinite Care and not to go find another a job because of the way that Infinite Care ran their business. Ever since then, we've been growing and doing business in other nursing homes. I oversee three nursing homes at this point. It's Golden Hill, Tenbroeck and then Sunset. I'm working with them now. The difference between this



kind of a company and other... I don't want to say other nursing home operators. They are very hands on. He talked a little bit about Esther. She's a social worker. She doesn't have the business background that most owners have. She has the empathy. She has the heart that we want to see in nursing homes. I can tell you an example of we had an employee who I worked with for many, many years. Her husband needed a heart transplant. Our insurance didn't cover his heart transplant. I was able to get the permission to get a different insurance, a new insurance for this employee and her husband. I got a phone call around 2:00 in the morning about two years ago saying that his heart became available. He has since got the heart transplant. He's living. He's working. Those are the things that are different between Infinite Care and other facilities that I know of. Again, I know all of the residents that I work with. I know all of the employees that I work with. We take care of our employees. We talked about staffing, how staffing is very hard right now. It's about the culture inside the home. It's not about running the home. The culture inside the home is taking care of people. Not only the residents but you take care of the staff as well. It is very, very difficult to find employees. We do different things. We'd like to implement different things at Sunset that we do in our other homes. I've initiated first time homebuyers' programs where people are waiting to make their or trying to make their first purchase of their home. They find out that there's other fees associated with that. They've saved their money. Long story short, what we implement is if you work for us and you apply for this homeowner's loan, we give you \$5,000 and each year you kind of work off your loan. We do camp scholarships for our staff who can't a lot of times in the Summer the CNAs go part time or they go per diem because they don't have childcare and they can't afford the childcare. We do camp scholarships where the children write us letters. We pick about five or six of them and then we send them to camp for the Summer.

**Mr. La Rue** I don't mean to interrupt you, but my question really, and I'm not implying because I don't know Sol Klein and I don't know what his other nursing homes is. Does Sol Klein have a portfolio of nursing homes that are not listed on this character and competence? If we were doing character and competence on Sol Klein would there be a different list of nursing homes here?

**Mr. Cicero** Yes, there would. He has a different list then.

**Mr. La Rue** That's really the question. Is would that list pass character and competence?

**Mr. Cicero** I believe it would.

**Mr. La Rue** You're moving the names around and who's got the portfolio and who does it and does it pass, or doesn't it pass? That's all I'm asking.

**Mr. Cicero** I believe that he would pass character and competence. I think the department would have to answer. There is an application pending before the department right now where I believe he will pass character and competence. I would like I just would like for the record, though. Can you speak to the involvement you have with Esther and the work that she does as well?

**Applicant** When speaking with Esther and working with Esther, she is very well aware of what goes on the nursing homes day to day. Like I said, she has that social work background, the empathy background. she if we're coming up with programs or different things, she and I discuss it. I'll talk to her about that. I am generally the one that's in the building more or most of the time as opposed to her. She and I collaborate back and forth all the time about what we'd like to see and programs we want.

**Mr. Kraut** Could I just follow up, Scott, and this is not to use to you. When the state, as you say, reviews and approves a consulting agreement, I believe they carry out the same sort of character and competence on the principles. They would have in approving that agreement if Sol Klein through Infinite Care, they would have reviewed character and competence about his capabilities to serve in a consulting capacity. I'm making a statement without knowledge if it's correct. You could say yes, no, whatever.

**Mr. Robinson** I think counsel's saying no.

**Mr. Kraut** No, we do not. One of the things you might want to put in a barn to discuss is if you are approving it and its individuals who own... You're hiring them as consultants. That part of that is they should minimally be able to pass character and competence. Because think about how you would evade. Your concern is indirect influence by evading the character and competence question. Let's say he was not or a member of a consulting group had all one star facilities. You wouldn't pass character and competence here. That's also the responsibility of the board that enters into that agreement to do due diligence on the operator. I think you raised a good question. Again, we're getting a drift from the application here but it raises good issues.

**Ms. Monroe** I have a specific question on the application.

**Mr. Robinson** Please do.

**Ms. Monroe** I don't know where our authority lands here, but in the letter from the ombudsman, Claudette says that they have ombudsmen, the ombudsmen people in the two homes currently under jurisdiction of Infinity Care and that are that base, if they're approving this. That reads to me like they have not had an ombudsman in this facility. What's the status of that? Is there one or is there not?

**Applicant** They do have an ombudsman.

**Ms. Monroe** They do?

**Applicant** Yes.

**Ms. Monroe** Well, it's not in the letter from the ombudsman.

**Mr. Kraut** I believe the ombudsman provided a letter to us.

**Ms. Monroe** It says that they have---

**Mr. Kraut** No, no, but I'm just saying they've reviewed the CON.

**Ms. Monroe** The two facilities currently operated by the proposed owners. There is a regular and consistent ombudsman presence in both facilities. Based on our review, we have no objection. It does not say that there's an ombudsman.

**Mr. Robinson** The purpose of that review was to attest to the quality and competence.

**Mr. Kraut** Of the other.

**Ms. Monroe** I agree.

**All** (People talking over one another)

**Ms. Monroe** Could we ask that there be an ombudsman?

**Mr. Kraut** No, no, there is. We have the ombudsman on the phone.

**Mr. Furnish** Can you opine on Ann Monroe's question, please. Thank you.

**Mr. Robinson** Could you turn on your camera, please?

**Mr. Kraut** Claudette, could you please turn your camera on?

**Ms. Royal** I don't have a camera. I literally just got back from a conference and joined this by Zoom so I could attend this one.

**Mr. Robinson** They have to be on. We have to visually see people.

**Ms. Royal** We do have a presence in the facility in Sunset. The two facilities that were reviewed are the two facilities that we were informed are currently being operated by the proposed owners. There are no concerns in those two facilities that the proposed owners are currently operating. Sunset also, we do have coverage there. We will continue to have coverage there if this application is approved. I will be working with my regional program to have an increased presence there if this application is approved.

**Ms. Monroe** Does the Ombudsman at Sunset Lake Center have the same confidence in the consult in the new arrangement as you have in the other two?

**Ms. Royal** We wouldn't be able to speak to that because from our standpoint our understanding was they are not currently operating the facility. That Sullivan County is. They wouldn't be reviewed. There wasn't discussion about those particular operation.

**Mr. Robinson** Mr. Thomas.

**Mr. Thomas** I don't want to belabor this, Mark. Just a quick question. I don't want to drag hospital stuff into nursing home stuff. We're talking about consulting agreements and prior approval by the department and management agreements are typically when they're prior approved by the department. I just what... Mr. Kraut talked about consultants being vetted as part of this process. Is it the same process for nursing homes as it is for hospitals?

**Mr. Furnish** No, management agreements that you're referring to reply only to Article 28 general hospitals. It's the ultimate maximum delegation of authority of any facility. Nursing homes don't come anywhere close to a management agreement.

**Mr. Thomas** Thank you.

**Mr. Thomas** In terms of very narrowly a consulting agreement then like the one we're discussing today. Let's say it's Hugh Nursing Home. I want to hire Peter as a consultant. Do you have to approve this?

**Mr. Furnish** I don't want to name names. If it's in the licensure CON process, we do look at it in the CON, but once they hand the operating certificate, we don't even look at that.

**Mr. Thomas** Thanks, Mark.

**Mr. Cicero** To Ms. Monroe's question, I think that's the heart of what's being asked right here. The operations at Sullivan County today are not in the Ombudsman's report because they don't operate it. They don't have control. They're not running from trying to help and it not going as well as they might like, but to take two years to change a Director of Nursing to have to have county approval. It's a lot different being a consultant, I think, at a county than it is at even a not-for-profit facility where you may have to answer to a board. To have to have approval every time you want to change a vendor, every time supplies need to be ordered or different type of supplies, any policy changes. It's very difficult. I think all they're asking today is to look at their record at their facilities from 2016 to the present and ask them to be given the approval to be an operator to have that ombudsman look at them there and hopefully to improve what is going on. What you'll certainly hear about the concerns that the folks here have about the quality of care today. They're being asked for you to look at them as consultants who certainly have tried and are there, but who, as Ms. Klein has said to me, are working with two hands tied behind their back, maybe one if you're working for another type of facility as a consultant. That's, I think, at the heart of the matter.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** I'm going to actually give the public an opportunity to speak. We do have a number of people that are signed up, if that's okay.

**Mr. Kraut** I think that's a good idea.

**Mr. Robinson** I do have some names that look like they've been signed up. I'm going to start with Sullivan County Legislator, Mr. Luis Alvarez if he's here.

**Mr. Robinson** I have people listed who've signed up to be speakers.

**Mr. Robinson** Well, I think we're going to work on the speaking list order that we have here.

**Mr. Robinson** Mr. Alvarez, please.

**Mr. Kraut** Just so you understand the process, we take testimony and then the applicant has the last word. They'll be no opportunity to rebut the last word.

**Mr. Robinson** Mr. Alvarez, please introduce yourself.

**Mr. Alvarez** I'm Luis Alvarez, County Legislator, District Number 6. You threw me off base because we had already a person that was going to come out and speak first. I really apologize a little bit. I have a lot of concerns. I got to get my notes out. It seems to be like it doesn't want to do that.

**Mr. Robinson** Do you want somebody else to be speaking first?

**Mr. Alvarez** You put me here already.

**Mr. Robinson** I put you there already.

**Mr. Kraut** If you had an order in which you want to do it. We can be flexible if you'd like.

**Mr. Alvarez** I prefer the order because it will give you kind of a view.

**Mr. Robinson** Who do you think is first?

**Mr. Robinson** Please come forward.

**Mr. Kraut** We're flexible.

**Mr. Alvarez** I appreciate it very much.

**Mr. Kraut** Yeah.

**Mr. Alvarez** Makes it easier.

**Mr. Robinson** You can stay right there.

**Mr. Robinson** For people in the public speaking, we ask that you keep your comments to about three minutes if you could and please introduce yourself.

**Ms. Kennedy** Good morning. My name is Lisa Kennedy. I live in New York.

**Mr. Kraut** Could you just pull the microphone closer to your mouth and just make sure the green light is on?

**Ms. Kennedy** Okay.

**Mr. Kraut** There you go.

**Ms. Kennedy** I'm here at my own cost to request that this committee deny this CON application by Sunset Lake. I'm a taxpayer resident in Sullivan County. I've been involved with the Adult Care Center in various ways for about thirty-three years as a student, nurse, nurse volunteer visitor, and now retired county employee. I worked for public health for twenty-five years. Lastly is DPS for the CHAA. I always thought that the adult care center wouldn't be such a bad place to live if I ended up there as a resident in my final years. It used to be a very well-run facility. In 2018, when I retired, the facility was rated five stars. It was a peaceful, orderly place. Under the management of Infinite Care for the last two years. I have to just interject that they totally managed the facility. The county is very much hands off. Infinite Care does everything. The facility declined to a one-star rating with additional indicators of abuse. There have been at least three Department of Health inspections this year due to serious complaints by the residents and their caregivers and fines and penalties imposed totaling \$32,000 so far this year due to the egregious nature of the citations, including lack of infection control, human rights violations, patient abuse and failure to provide CPR. There's another Department of Health inspection visit anticipated any minute due to complaints about call bells going unanswered. Infinite Care is a company which is deeply invested in making a financial profit derived from the institution of deficient care, which causes undue suffering for the residents. They hired an administrator who was entirely inexperienced and who only reports to Infinite Care not to

the county or public. They fired all the local medical providers who had cared for the residents for many years. They now import medical services from the metropolitan area bottom of the barrel service providers, which has resulted in increased falls, wounds, bedsores, UTIs and other avoidable adverse events. Staffing has been deficient, mostly due to Infinite Care's mismanagement with an RN turnover of 65%, resulting in substandard care from inexperienced and insufficiently trained staff, including two RNs denying CPR to a dying resident who had no DNR. Many experienced nursing staff have left in order to protect their licenses. There's a majority of staffing hired by Infinite Care who have no allegiance to the residents or institution. Long term residents often stay in bed all day unwashed due to insufficient staffing. Broken equipment stays broken. Sheets are hung from the ceilings instead of dividers. Garbage cans reside under leaks from the air conditioning system. One whole unit of residents eats three meals a day in their rooms because the dining room was taken to provide rehab for short term residents. Weekends are the worst. This very deficient care is documented in the DOH surveys this year. Although Infinite Care plaintively describes their efforts to recruit more staff the reality is that the current remaining county employees at the Adult Care Center have been advised to transfer to other positions in the county pending this CON while Infinite Care has withheld any specific offers regarding salaries or benefits, denying their employees any sense of safety in the employment. If they get their CON the employees will have to accept whatever they offer or lose their jobs. This company cares much less about retaining their experienced employees than saving money, all at the expense of the resident's quality of care. Infinite Care has not complied with the conditions of their management contract consulting contract. For example, they didn't pay the fines imposed recently by CMS. The county had to hold an emergency meeting to pay the fines quickly in order to expedite this hearing. Although it was clearly Infinite's responsibility, Infinite Care failed to invest any of the \$3,000,000 they had contracted to provide in renovations to the facility and failed entirely to present the required quarterly financial reconciliations to the county. How can you award them a CON when they haven't proved their financial capacity?

**Mr. Robinson** One minute more, please.

**Ms. Kennedy** Their contract has gone unenforced by our legislature, which is currently dominated by an ultra-conservative group who have consistently, publicly misrepresented the financial situation of the Adult Care Center to justify their actions in privatizing it. This legislative majority is eager to divest the county of any responsibility for the Adult Care Center before 2024, because there's an election for all nine seats in just five days. It seems likely that the county's new legislature will move to resume management of the facility next year. We can't further afford to jeopardize our health resources in such a poor county by throwing our county's nursing home away to a company which is utterly failed to provide stability and an adequate quality of care for our long-term residents. Please deny the CON application or at least table it to next year. Please help us to save our nursing home and to protect the residents there.

**Mr. Robinson** Thank you for your comments.

**Mr. Robinson** Mr. Alvarez, do you want to go now or is there somebody else that goes next?

**Mr. Robinson** Please introduce yourself.

**Speaker** My first experience with health care and the government was with the old HSA system back in the seventies. I went through all that. I was on the board, and I was Chair

of the first one. Lately, after I retired, I've become an advisor on the Office for the Aging Board, RSVP board. I am President and Vice President of Senior Club and also Co-Chair of the Senior Legislative Action Committee, which has been always a proponent of keeping the Adult Care Center public. I've listened to various discussions concerning the Adult Care Facility over the past twenty years. I spend a lot of my time at the legislation to pass three sessions or administrations. I've got as much attendance as the legislators. I've learned a lot listening to this. The main thing has always been money, money, money and hiring people. I have a problem with Esther Klein as being a life coach that she is. A life coach is not a licensed profession in the State of New York. I heard somebody say here that she is a social worker. Well, if she was a social worker, then I would assume she would have her MSW or so forth at the end of her name. That is not the case. I see that she owns nine nursing homes in the state of Florida, which to me eleven and a half percent as an investment has nothing to do with this operation and so forth. Now, let's talk about the value of this nursing home. You said there's two letters. Where are they? I'd like to see them. I like to know how they come up with the numbers. Too many of our banks have experienced inflated numbers over the years. They should be checked into. The other thing she's going to do is reduce costs by reducing benefits to employees. That's going to not be good. As far as the process the county put an RFP out. Five people responded. Three were chosen by the LDC to look at. The LDC on the three because they were charged to give three names to the county and the county got the three and then they chose Infinite Care. On July 2nd, the first day, we could have an open meeting after COVID, which we were never told they had a meeting, the Legislature. They went into Executive Session twice to discuss this situation. None of us in the public knew. We were watching on video. They come out. They finally say, we're going to sell it. That's the first inkling we get what they're going to do. They have a public hearing. Before I get to the public hearing, the Teamsters took it to court on Article 78, and they lost. A fact that they didn't have the meeting in public. They had a public hearing and never told we, the public.

**Mr. Robinson** One more minute, please.

**Speaker** This is the important part. If you go to the county website and you go to management budget and you look down, there's a little site you put into Infinite Care and you get all of these contracts. I do not hear you put told that earlier. It's signed and is signed by one and only Sol Klein. Sol Klein is on every one of these signatures, on every one of these contracts of his others name changes are what they are. Was in charge before 1521. They had a termination agreement, which was on 11/19/21, and then they had another agreement that started 8/15/2021.

**Mr. Robinson** Well, thank you very much for your comments. We appreciate it.

**Speaker** I would suggest you go look at the website and check it out. The truth is not there.

**Unidentified Speaker** Sir, did I hear you say with was the Teamsters that?

**Speaker** Yes.

**Unidentified Speaker** Why was that? Do the Teamsters represent people in the nursing home?

**Speaker** They went in there under Article 78 for failure to discuss the information they're discussing in public. It should have been.

**Mr. Robinson** Thank you.

**Mr. Robinson** Is this your turn now, Mr. Alvarez?

**Mr. Alvarez** Just to make you an understanding. I've been working for Sullivan County for at least forty-three years. Thirty-five of them as a Police Officer assigned to the juvenile division. I deal with the kids. I've been a member of the now disappeared Liberty Volunteer Ambulance Corps. I was their medic and their EMT, President, everything else. I want you to listen on the part where this is involved with the Adult Care Center. I'm still a fireman and involved with many other organizations that has to do with EMS, especially at the state level and their committees. But for more than thirty years, I was going through the Adult Care Center as a member of Liberty Volunteer Ambulance Corps. Now, the volunteer Ambulance Corps is right where that Adult Care Center is. We're right there. I'm a member of the Liberty Fire Department too. I've responded a couple of times in there. Through the years, I've known that facility very well. The people that worked there, how the facility was kept. I remember your past, the Department of Public Health Medical Director one day said that he came to visit my wife when she was there, that the place was clean. It's always been like that. My wife had an aneurysm on the brain in 2018. We both retired with the idea that we were going to take it easy. She ended up passing away about a year and a half ago. During that time, after going to Westchester, we had put her at the Adult Care Center. And at that particular time, the Adult Care Center was being operated by the county. I was the Chairman of the county at that particular time, which was really becoming very hard because of my EMS experience and everything else in trying to take care of my wife. How can I be a legislator at the same time that my wife of forty-seven years was there? She went from a woman who could take care of herself to a woman who could not take care of herself. She always said she was going to take care of me. I ended up taking care of her. That's the way God does things. I know exactly how it operates. During that period of time that I was the Chairman of the county and if you read the audit reports of the county, at no time we were in a hole for \$20,000,000. I don't know where this figure came from. I don't know how this happened overnight. Just so you have an idea how it happens. There is nine legislators there in that county. After my first four years of being the Chairman, a second group took over. They had another different Chairman. All you need is five votes. If five people vote yes it goes through. I voted no not to sell it. Now, at the present time, I was looking at my notes. I've been asking for a reconciliation. I want to know how much money goes in; how much money goes out. Statements of net positions due to counting without explanations. Another thing that I saw in the report is this is so much money that they own the county. I don't know from where they own the county. I should have brought my glasses. Remap for improvement of care. I want to know what they're doing. You show me how you're going to do it, what they're going to be doing in there. Added at taxpayers' costs. I have no idea what it takes. You're going to ask yourself. Because I've been watching here for quite a while, each one of you, how each one of you communicate, how each one of you know what's going on. For every action there's a reaction. I've been watching you for the last comment. I don't know what goes on. They don't tell us. When we start questioning what's going on, we got ourselves in trouble. I don't think that happens here. Financial misrepresentation that the amount of money that was being paid out it's not true. I also asked a couple of minutes ago for a little bit of information about this. The people that work there, they're not county employees, not all of them. The lady that was sitting here. She's a consultant. how they conceal is going on? We don't know. They are doing the billing. It's not us. It's not the county doing the billing. Infinite is doing the billing at this time. The administration is in our payroll, county payroll and their payroll tool. We don't know. I really don't know who really has the responsibility to



be in there. We're going in elections next Tuesday. All we're asking is for... The concern is to hold this for a while. Table it for right now. Let us really get all together again. My major concern is not if we're making money, if we're losing money, how do we take the taxpayer's money, use it the right way to serve the people that elected us to be there.

**Mr. Robinson** Thank you for those comments. We appreciate it.

**Mr. Alvarez** That's what I want. Everybody who works in public office is not there to make money. More there to serve the public. I'm concerned about that. You know, at my age, I want to make sure that when something happens, I have a place to go.

**Mr. Robinson** Very good. Thank you for those comments. Appreciate it.

**Mr. Alvarez** Thank you.

**Mr. Robinson** Who is next?

**Ms. Scott** Hi. My name is Catherine Scott from Fremont Center, New York. My Mother is a resident at the care center at Sunset Lake. She has been for almost seven years. To speak on what Mr. Alvarez said about the election. I am a candidate for District 5 for Sullivan county legislature. This has been a huge topic of this election. A lot of the candidates running to oppose the current legislators are running to keep this facility county owned and managed. You had asked the applicants about how the public responded to this news. On July 14th, 2020, there was a public hearing held at 8:00am. That's a Tuesday. That is a workday. We come from a community that is low income. We come from a community that is a lot of people who have to work. Having a public hearing at Tuesday at 8:00am is not considering the public. But even with COVID precautions, we filled the rooms, we filled the hallways. We had a line going outside into the parking lot. This half hour public hearing turned into over two hours. There were so many people that were there to talk that they had to continue that public hearing onto Thursday, July 16th. In total, there was five and a half hours of people who spoke. Of everyone who spoke, there were only two people who spoke about selling this facility in favor of it, actually inquiring about it. One was Mr. Lowell Feldman who was here to speak. He is the Chairman of the LDC. He had asked the legislature if they were going to sell it to please consider him. The other one was an owner and operator of another local privately held nursing home. Every other person for five and a half hours was there to support the county keeping this facility. Mr. Alvarez spoke about being a volunteer. Our community, we have volunteer fire departments, we have volunteer ambulance Corps. We are a community that values each other, and service and we take care of our own. This facility, in the almost seven years that I've had the experience, I have seen the county employees there are very dedicated from the people who mop the floor to the people who do the laundry, to the CNAs, to the LPNs, to the RNs. They are people who are taking care of people in their community. One of the women who works the laundry, she and I grew up together. We went to Bible study together. Her Mom was the organist at our Bible study. When she brings clothes up for my mom, she stops and she says hello. You know, if my mom needs something, she goes out to the CNA, she goes out to the nurse to relay that. There are extra levels of care in this facility that you don't see other places. This is a very special place. Now, in the last two years that Infinite Care has been in this consulting agreement they have been doing the daily day to day management. The administrator, the supervising administrator, I believe is the title is Megan Holton. She came in with Infinite Care with a billing contract. Infinite Care is paid \$30,000 a month to do the billable for the facility. When Burt Cohen, the then administrator was put on leave and then fired because Megan has an administrator's

license, she stepped up to be the supervising administrator. I am the Vice President of the Family Council of this facility. We meet monthly with the administration. We have met with Megan Holton. We've met with Katie Perez. We've met with Miriam Maroon, who is the Regional Director of Nursing for Infant Care. This may be a consulting contract, but these people are there handling the day to day. The biggest problem here is with staffing. We all know that there are staffing challenges post COVID in health care. We all live in the same world. We cannot do anything to address the global pandemic. We cannot do anything to address staffing. What we can do is we can address admission policy. If you do not have the staff to take care of people stop admitting them. This facility has not altered their admissions to meet the staffing needs that they have. That's a problem. Monday night, a friend of ours, a friend of mine, very good friend of mine, her mother fell. When I asked how many CNAs were on? There were three CNAs on the 4:00am to 12:00am shift for forty residents. This was the result of her falling. She was transferred to the hospital locally and then on to Westchester. Last night on her unit thirty-nine residents. There was one CNA on from 12:00am to 4:00am. How does one CNA change thirty-nine residents every two hours? How does that happen? This is how people end up laying in their own urine for hours and hours on end. We have found my mother laying in her own urine. Just a few weeks ago I went to visit her. At this point my mother is on hospice. She cannot take care of herself at all. She was so covered in her own feces and the smell in the room was so bad that even after we got her changed it was an hour before the room, just the smell dissipated from the room. These are my mom's final days. I categorized the last two years since Infinite Care has had this consulting contract as a series of miseries. My Mother fell in April of 2022 and broke her hip. The DOH came in to investigate. They found that the facility was at fault because my mother was an Assitive 2. Because they didn't have staff. They only had one CNA. That's how my mom fell. Well, the answer to the survey was training. You cannot retrain staffing. You cannot retrain people who don't have the help that they need. My Mother has been admitted to the hospital or to the emergency room several times for dehydration. I wrote to you about this. I've submitted pictures. Please do not make a decision about this. We do have an election on Tuesday. If the will of the people is to keep this facility, they will show up in the voting booth and we will make the changes that are needed to protect the people in our community.

**Mr. Robinson** Thank you for those comments.

**Ms. Scott** Thank you for your time. I just want to say, I did take the day off of work. As I said, I am running a campaign. I had to take time off from doing that. Five days left to the election. I do appreciate the time that you've allotted us for the five hours round trip that we've made to come down here. I'm just disappointed that Mrs. Klein could not do the same.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** Just a reminder three minutes.

**Mr. Setren** I'll do my best.

**Mr. Robinson** Try to cover new ground.

**Mr. Setren** Good afternoon. My name is Lou Setren. I'm a lifelong resident of Sullivan County. I am the President of the Family Council at the Sullivan County Adult Care Facility. I was also a county employee, recently retired, retired in 2018. During that time, I also acted as the business agent for Teamsters Local 445, which represented the bulk of the

employees at the Adult Care Center. I held that position from 2005 to 2010. My Mother is a resident of the facility receiving long term care after having had two short term rehab stints beginning in 2015. She's been a long-term care resident of the facility since 2018, when the facility was rated at five stars. I will try to cover new ground. Looking at the application itself, I believe the application is flawed insofar as it describes a seventeen slot Adult Daycare Health Program. The Adult Daycare Health Program has not been in operation since 2020. Further on, I'll reiterate, Ms. Klein is described in the application as a skilled nursing operator, a term that is meaningless in the State of New York. Looking at the financials, it is clear that Ms. Klein is a skilled nursing investor, not an operator. Further, Ms. Klein is described as the 100% member of Sunset Consulting, LLC, with whom the applicant will enter into a contract to continue providing services at the facility. With regards to the county's involvement in the day-to-day operations of the facility, a statement was made that it takes two years to name a Director of Nursing. That's patently false. It has been my experience. There has always been a succession plan at the facility when one Director of Nursing was leaving either due to retirement or any other reason. The Assistant District Director of Nursing is then moved up into the position, which is what happened most recently before the current Director of Nursing was brought on board. As far as the county having sole involvement in any citations or actions taken by the DOH or CMS regarding the facility. The facility was cited in a survey on January 5th of 2023 for a lapse or failure to abide by the facility's own infection control procedures. I only just became aware of this, but the facility was further cited by DOH for their failure to observe the infection control policy. A settlement agreement was reached ultimately signed by the Commissioner of DOH on July 5th of 2023. They were fined \$2,000. The county legislature never had a resolution brought forward to pay that \$2,000 fine as they had with other fines in the past. The signatory for the facility on that settlement agreement was Megan Holton, the licensed nursing home administrator at the facility. I believe that when Infinite Care or Sunset claims that the county is solely responsible for the operation, I would further add that every recommendation made by Sunset, as far as awarding contracts for services, as far as hiring staff goes to a resolution before the legislature. There is zero discretion in this legislature. Those recommendations are followed. Those treatment providers are brought on as contractors to the facility, much to the detriment of care provided to residents at the facility. Just give me a second because I had several prepared notes. As far as staffing is concerned, the application further indicates that Ms. Klein and Ms. Perez will bring their leverage to bear on staffing agencies in the area, as well as effectively marketing the facility. They'll strengthen their relationships with area doctors, hospital discharge planners and residents, family members. If they're going to do all of these things and they've been the consulting agency for two years. If this were an audition, they would not be receiving a callback if they did not bring this leverage to bear during the most harshest periods of short staffing. What makes anyone think that they will bring this leverage to bear once they become the operator? While Mr. Walters hit the nail on the head. It is a question of money and making the facility profitable.

**Mr. Robinson** Well, I just want to thank you very much for your comments. We do appreciate them.

**Mr. Setren** Again, I would urge you to either defer any decision on this application or flat out deny it. You are putting the quality of life and end of life care. As you've heard, a resident died due to their failure to perform CPR when there was an advanced directive in place for that resident. Two nurses on staff did not even have stethoscopes with them, according to the survey report, to check for heart sounds. One assumed that CPR and measures had been taken because the crash cart was present. Now, I know once you

initiate CPR you do not stop until the doctor declares the person deceased or you are physically exhausted with no relief.

**Mr. Robinson** Thank you very much.

**Mr. Setren** Thank you for hearing us.

**Mr. Robinson** You're welcome.

**Mr. Robinson** Is there anyone else from the public that wishes to speak on this application?

**Mr. Robinson** Please keep your comments to three minutes. Thank you.

**Mr. Feldman** I'll try my best.

**Mr. Feldman** My name is Lowell Feldman. I've been a licensed nursing home. I do Chair the LDC as a volunteer. I was recruited by the county legislator. I was issued a nursing home license in 1973. Still active. I was an operator at numerous facilities around the state until a number of years ago when I sold my last facility primarily due to financial concerns to reimbursement to find it unsustainable. I still consult to networks and hospital networks with nursing homes and unfortunately most recently represent hospitals, nonprofits that are trying to sell their facilities. I represented one in Sullivan County, which unfortunately during the height of COVID, asked me to close their unit because of their financial conditions to maintain it. At that time, in fact was unable to transfer patients to county nursing homes due to staffing difficulties as well as infection control.

**Mr. Robinson** Could you make comments that are specific to this application?

**Mr. Feldman** Yes.

**Mr. Feldman** As Chair of LDC, that was again, the LDC was formed by the county by a supermajority voted in legislators to divest from the operation of the nursing home and lease it to an operator. We, as previously mentioned, the LDC did the vetting of numerous applicants of multiple facility operators around the state made recommendations down to three to the legislators and then the legislators voted unanimously on Infinite Care based on our vetting and then repeated vetting by them and interviewing of parties, interviewing of the facilities for visits to the facilities and review of past practices and competencies. I am also a resident of the county and know the county has dire needs in other areas. It has the highest per capita rate of overdose rates in the State of New York. It is the second worst health county in the State of New York. I know that well. I sit on the Drug Council. I actually wrote a grant to bring a mobile treatment unit funded by Oasis to provide services here.

**Mr. Robinson** Thank you for your comments.

**Mr. Feldman** I don't think that was three minutes.

**Mr. Kraut** You have not said one word about the application.

**Mr. Feldman** I will get to that.

**Mr. Feldman** As far as the application goes, I'm well aware of some of the deficiencies that have been noted. I've been in this industry over fifty years as I said. I wrote the guidance for training of administrators, and I've just been recently appointed as an independent quality manager, which is a new program. I just want to finalize. As a member of the community and as citizen, I do recommend that the county is unable to continue operating.

**Mr. Robinson** We get the point. Thank you.

**Mr. Feldman** Thank you.

**Mr. Robinson** Thank you very much.

**Mr. Robinson** Is there anyone else from the public?

**Speaker** I did not sign up.

**Mr. Robinson** Come on forward.

**Speaker** It's very quick.

**Mr. Robinson** Okay.

**Speaker** Short, sweet and quick.

**Mr. Robinson** Good.

**Speaker** My name is Diane. I live in Blooming Burg, New York in Sullivan County.

**Mr. Robinson** Yep.

**Speaker** My neighbor came to me crying that he took his wife out of Sunset Lake facility because she was being fed while she was unchanged, filthy, and had had a major stroke. She was completely unable to take care of herself. He brought her home. He has her home now for three weeks in that condition, of course, clean. While he was cleaning her up, he found mousetraps and rat poison in the patient room behind the toilet. This, to me, is the most horrible thing. I grew up in the city. I've seen almost everything that I've never seen a hospital or a nursing home like that. The air conditioners on the roof have been not working for years. Not properly. They're leaking. They're leaking through the ceiling onto the second floor. They have trash cans and garbage cans, whatever, catching the water. This has not been corrected in the past two years. They brought portable air conditioners into the patient areas. They're very content to say that 78 degrees for patients in bed is okay. Now, you hear me talking? I'm asthmatic. I cannot survive in 78 degrees. I can't imagine somebody 96 years old in a bed with respiratory problems surviving. The patient who died was gasping for air, which is the reason why the nurse's aide CNA went to get a nurse who came without a stethoscope, called for another nurse on a crash cart. Didn't create CPR. The crash cart came. The second nurse came. Again, no stethoscope. Declared her dead. This patient did not have a DNR. This patient was supposed to have been given total care. Now, I'm sorry, but I do not consider this a well-run facility. This was not like that years ago. This is like that now.

**Mr. Robinson** Thank you for those comments.

**Mr. Robinson** I'm going to give the applicant an opportunity to come back forward.

**Speaker** There's one more person.

**Mr. Robinson** Sorry, I did not notice that you were there.

**Speaker** That's okay.

**Speaker** I wasn't on the list. I'm sorry, but if you give me a minute. My name is Julie Drayer. Former county employee retired. Thirty-four years with Sullivan County. Several about six to seven of those years were with the care center as a caseworker. I have familiarity with how the facility was, how the care was. My Mother-in-law is a resident there. I see how things are now. One point that I want to make is when the county entered into this agreement in December of 2020, the Chair of the legislature said that, hey, the facility rating is at two and a half stars. We want to improve that. We want to improve care for the residents. We want to protect the employees of the facility. We want to protect taxpayers. Well, I only can say that here we are, 2023. We're a one-star facility. The care is not improved. We're not even sure what effect it is on the taxpayers, quite frankly. From what I understand, it's kind of a mystery how that is going to pan out. The employees are in limbo. I just say that this is the course of how it's worked. I used to admit people to the facility and sit with families. I could confidently look them in the eye and say, don't worry, they're in good hands here. I could not do that job today because I could not say that.

**Mr. Robinson** Thank you for your comments.

**Mr. Robinson** For all of you that traveled down for this hearing and made your remarks we really do appreciate that. We do take into account what we hear from consumers and from the public. Thank you very much.

**Mr. Robinson** I'm now going to call the applicant back.

**Mr. Robinson** This is just a three minute again.

**Mr. Cicero** Yes.

**Mr. Robinson** You've heard some of the comments and some of the feedback that we've heard. Any response that you have to that would be appreciated.

**Mr. Cicero** I'll make some response and as well Katie. We'll be available for questions. Number one, the consulting contract started on October 1st, 2021. Number two, it did take two years to be able to move the Director of Nursing out of that position and to name a new Director of Nursing. As you heard, a lot of things go to the legislature in order to be able to make changes here. It's a very difficult place to make changes. The air conditioning unit could not get capital approved to replace the air conditioning unit. There is certainly a volume of folks against this. I'd like to remind you that we did have, in addition to the Sullivan County legislature, submitted letters of support from the resident council chairperson for this application. Union Representative Erica Martin, a long-term employee, the Sunset Lake Local Development Corporation, who you heard here, and another resident relative to express something from the silent majority. The \$28,000,000 that was expressed is in your staff report. It's directly from the county. That's where the \$28,000,000 came from. Those are numbers audited by the county. As I said, this is an opportunity for a

new entity to come in and be the operator. I think a lot of what you just heard was related to what the operator has not done. These two individuals have a very strong record in New York State and elsewhere in operating facilities and have a strong support from the department and from the ombudsperson. Thank you.

**Applicant** I just wanted to express my feeling of I understand the tension and coming from a county home where people were involved in the county for so many years, and then to have a private entity come in and kind of look to take it over. We're doing it in the best interest of the residents that live there and the employees that work there. We are not about to change things we talked about. I'm sorry. We talked about not keeping employees there or not having the salaries ready for them to go. The reason why it's hard to keep county employees there right now is because when they're working in a nursing home the rates have gone up so, so high that the county still pays the lower rates. They did just get an approval to do increases. When you have two nursing homes that are right next door to you that are paying exorbitant amount of money for employees to work there it's hard to keep up with that. In a private sector, we can change those rates as opposed to going back to the county and getting them to change the rates. It takes a long time. We are in the best interest of the residents and the family members of the facility. I can guarantee you that we will take good care of them if given the opportunity to have the home.

**Mr. Robinson** Thank you.

**Mr. Robinson** Thank you very much. We appreciate that.

**Mr. Robinson** It's now time for us to do our jobs.

**Mr. Robinson** We have a motion on the floor for the application.

**Mr. Robinson** I'm going to call the question.

**Mr. Robinson** Yes.

**Mr. Kraut** Unless anybody has any other comments or questions.

**Mr. Robinson** Right.

**Mr. Kraut** I mean, look, the issue here is every time we have a county nursing home thing that this is not unusual what we heard. What we have to deal with is you have an operator that is clearly reluctant to make the investments that are necessary to run a contemporary nursing home. You have obviously these complaints. There is clarity as to, I think, who is accountable, although obviously the residents and the public have a different point of view based on what the legal definitions may be. The reality here is there's a lot of other issues that are around this. Would the residents be better served by the transfer of the home into the ownership group that's proposed that has been reviewed by the Department of Health, who's recommended approval? You've gotten a letter from the Ombudsman who has no objection to the transaction as well and is validated of the quality of care that has been offered in the other two homes that the people operate. I think at this juncture, if you don't have questions, we should call a vote.

**Mr. La Rue** I just had one comment.

**Mr. La Rue** I mean, there seems to be multiple competing interests here. It's very difficult to sort out what it is. You got the ombudsman that is supporting it. You've got the resident council that's supporting it. You have the health department. In those circumstances, when you really can't figure out what the heck is what, I'm going to defer to the department's recommendation.

**Mr. Robinson** Well, let's call the question now.

**Mr. Kraut** I think that's an accumulated deficit. It's a three-year accumulated. It's not a one year annual. O

**Mr. Robinson** All in favor of the application?

All Aye.

**Ms. Monroe** What did you mean by deferral?

**Mr. Kraut** No, no, He doesn't want to defer the vote.

**Mr. La Rue** What I meant is I'm going to go with the recommendation that the health department made, because the information that's been presented here today is from multiple competing interests.

**Mr. Kraut** Okay.

**Mr. Robinson** All in favor of the application say, "aye."

All Aye.

**Mr. Robinson** Any opposed?

**Mr. Robinson** Two opposed.

**Mr. Robinson** We do not have a motion for approval because we need seven votes. We do not have them. This will move forward to the full council without a recommendation from the committee.

**Dr. Berliner** Some of the testimony suggested that if there was a change in the county legislature next week, that there would be a big change.

**Mr. Kraut** I hope so.

**Dr. Berliner** That said, I mean, is there any indication that if there were to be a new legislature that they would immediately change this recommendation?

**Mr. Kraut** No, no, no, no, no. Sit down.

**Dr. Berliner** I'm just saying that, in fact, that's the case that happens. Don't know that it will. Don't know that it won't.

**Mr. Kraut** Well, wait a minute. We're going to have the meeting on the 16th. Without deference, these individuals do not represent.



**Dr. Berliner** I understand that.

**Mr. Kraut** Yeah.

**Dr. Berliner** I'm saying if in fact, the legislature changes its recommendation.

**Mr. Kraut** Yes, but they're not going to be sat until January 1st. If the county wants to do that and let them inform the Department of Health, withdraw the application before the 16th. I mean, that's the issue. We're going to be meeting just so you're clear. We'll meet again on November 16th. The recommendation of this committee, which is no recommendation. The application will go forth to the full committee and that committee will hear a summary of this discussion and render a decision.

**Ms. Monroe** This is a decision extremely important to both Infinity Care and to the county. The fact that... What's her name? Ms. Klein Is not here on such a significant day and she's a 95% owner will be of this facility speaks to me as someone who figured this would be an easy thing. I'm very torn because I believe that the county can't afford to keep this going. If we don't have another operator one of their choices is to close it. While that would have to come to the department, would it not? That it's still an option. That does not look like a good alternative either. I really feel that the county isn't here who claims, according to the two folks from Infinity Care to still be the operator. They're not here.

**Mr. Kraut** They're not required.

**Ms. Monroe** May I finish?

**Ms. Monroe** Ms. Klein is not here. I feel that this is too important a decision to be made today, which is why I voted no.

**Mr. Kraut** I don't disagree with the statement about Ms. Klein. The county is not the applicant. The applicant is represented here. I'm not stating. I'm not disagreeing with you. The county held a public hearing. The county went through a public process. They chose and made a decision. As you know, every decision there are people that are for it and against it. What we are running a risk is the people that are in the middle of this fight are the people that are going to suffer the delays, the inability every... I mean, I think the information we're provided about how the county makes investment, they could not approve the capital to address the air conditioning system. I would argue this is more... We do not have the luxury you're suggesting.

**Mr. Kraut** Yu voted, it's fine. It still will go through the 16th.

**Ms. Monroe** I understand.

**Mr. Kraut** I wish we went with a recommendation but we don't, and I think that's fine, too. I mean, we all get to express our opinion.

**Mr. Robinson** As you can see, this is a very... We appreciate the complexity of the issue and understand the sentiments that are expressed on both sides of this issue. It's as difficult for us to kind of go through this process as it is for you, all of you, both the applicant and those people that are opposing the application. We just appreciate your participation. This is part of the public process. As Mr. Kraut said, this application will be

considered at the full council meeting on the 16th. I will point out that at the meeting on the 16th there are no public comment periods. You're certainly welcome to attend. The council makes these deliberations in the public sphere but not with public comment permitted. Just to let you know that.

**Mr. Robinson** With that, I'm going to adjourn this meeting of the Establishment of Project Review Committee. Thank everybody for their participation. I look forward to seeing you in two weeks.